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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 303

ALICE LEE GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA, APPELLANT,

vs.

AMERICAN PRESS COMPANY, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 29, 1935.

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[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN LOUISIANA, BATON ROUGE DIVISION

(Equity)

No. 315

AMERICAN PRESS COMPANY, INC., et al.,

vs.

ALICE LEE GROSJEAN, Supervisor of Public Accounts

PETITION—Filed Sept. 20, 1934

To the Honorable Wayne G. Borah, Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The petition of American Press Company, Inc., Capital City Press, Item Company, Ltd., Journal Publishing Company, Inc., Lafayette Advertiser-Gazette, Inc., McCormick & Company, Inc., News-Star-World Publishing Company, Inc., The Times Picayune Publishing Company and Times Publishing Company, Ltd., each a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana, with respect represents:

I

(a) Petitioner American Press Company, Inc., has its domicile at Lake Charles, in the Parish of Calcasieu, Louisiana, and is the owner and publisher of the "The Lake Charles American-Press", a newspaper published each week-day evening in the City of Lake Charles, La.

(b) Petitioner Capital City Press has its domicile at Baton Rouge, Louisiana, in the Parish of East Baton Rouge, Louisiana, and is the owner and publisher of the "Morning Advocate," a newspaper published each morning except Monday, and the "State Times", a newspaper published each evening except Sunday, in the City of Baton Rouge.

(c) Petitioner Item Company, Ltd., has its domicile at New Orleans, in the Parish of Orleans, Louisiana, and is the owner and publisher of "The New Orleans Item", "The Morning Tribune" and "The Item-Tribune", newspapers published each week-day evening, each week-day morning and each Sunday morning, respectively, in the City of New Orleans.

(d) Petitioner Journal Publishing Company, Inc., has its domicile at Shreveport, in the Parish of Caddo, Louisiana, and is the owner and publisher of "The Shreveport Journal", a newspaper published each week-day evening in the City of Shreveport.

(e) Petitioner Lafayette Advertiser Gazette, Inc., has its domicile at Lafayette, in the Parish of Lafayette, Louisiana, and is the owner and publisher of "The Daily Advertiser", a newspaper published each week-day evening in the City of Lafayette.

(f) Petitioner McCormick & Company, Inc., has its domicile at Alexandria, in the Parish of Rapides, Louisiana, [fol. 3] and is the owner and publisher of the "Alexandria Daily Town Talk", a newspaper published each week-day evening in the City of Alexandria.

(g) Petitioner News-Star-World Publishing Company, Inc., has its domicile at Monroe, in the Parish of Ouachita, Louisiana, and is the owner and publisher of "The Monroe News-Star", "The Monroe Morning World" and "The News-Star-World", newspapers published each week-day evening except Saturday, each week-day morning except Monday and each Sunday morning, respectively, in the City of Monroe.

(h) Petitioner The Times Picayune Publishing Company has its domicile at New Orleans, in the Parish of Orleans, Louisiana, and is the owner and publisher of "The Times Picayune" and "The New Orleans States", newspapers published each week-day morning and evening, respectively, and in combined form on Sunday morning, in the City of New Orleans.

(i) Petitioner Times Publishing Company, Ltd., has its domicile at Shreveport, in the Parish of Caddo, Louisiana, and is the owner and publisher of "The Shreveport

Times", a newspaper published every morning in the City of Shreveport.

II

Defendant Alice Lee Grosjean is the Supervisor of Public Accounts of the State of Louisiana, and is domiciled in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana.

III

Each of the above mentioned newspapers except the "The News-Star-World" and the "Morning Advocate" has a circulation of more than 20,000 copies per week within the State of Louisiana.

IV

There are no newspapers, magazines, periodicals or other publications published within the State of Louisiana and having a circulation of more than 20,000 copies per week except the newspapers owned and published by petitioners as hereinabove set forth. There are, however, published within the State of Louisiana, certain other daily newspapers having a circulation of but slightly less than 20,000 copies per week, and these newspapers compete with the newspapers published by petitioners both as to circulation and advertising.

[fol. 4]

V

There are approximately 120 weekly newspapers published in the State of Louisiana and circulated throughout the State, but none of them has a circulation of as much as 20,000 copies per week. Said weekly newspapers also compete with petitioners both as to circulation and advertising. There is at least one weekly newspaper published and circulated in each of the parishes in which are published the various newspapers of petitioners, and there is direct competition in all parishes between such weekly newspaper and such daily newspaper and this is particularly true as to legal and judicial advertising in all of the parishes except the parishes of Orleans and Lafayette. There are approximately 163 publications published in the State of Louisiana selling and publishing advertising and the 13 newspapers of petitioners are the only ones sought to be

taxed by the provisions of Act 23 of 1934 of the Legislature of Louisiana.

VI

Throughout the United States and in the State of Louisiana there are six principal media of advertising, to-wit: (1) Newspaper advertising; (2) magazine advertising; (3) radio broadcast advertising; (4) outdoor advertising (principally billboards); (5) street car card advertising; and (6) motion picture advertising. The amount spent during the year 1933 throughout the United States for such advertising was approximately the following:

(1) Newspaper advertising	$453,000,000.00
(2) Magazine advertising	137,000,000.00
(3) Radio broadcast advertising	57,000,000.00
(4) Outdoor advertising	40,000,000.00
(5) Street car card advertising	11,000,000.00
(6) Motion picture advertising . . . less than	10,000,000.00
Total	$708,000,000.00

These figures are representative of the situation in the State of Louisiana, with regard to the ratio of revenue derived in said State from the respective media of advertising.

VII

The revenues of petitioners and of newspapers in general and also of other publications are derived almost entirely from monies paid by regular subscribers to, or purchasers of, said publications, and from monies paid for the insertion of advertisements in said publications. The revenue derived from circulation is a substantial part of the [fol. 5] total revenue and varies materially in its ratio to advertising revenue with respect to particular publications.

VIII

The volume of circulation is a factor in fixing advertising rates, but it is only one of several factors. The quality of the circulation, the competitive conditions in the particular territory served by the newspaper, the economic conditions prevailing in the particular territory served and

other factors are of great importance. Thus it frequently results that a daily newspaper with a much smaller volume of circulation than another has advertising rates considerably higher than the advertising rates of the other newspaper having a greater circulation, and obtains an annual income from the advertising published in its columns much greater than that obtained by the other newspaper having a greater circulation.

IX

The Legislature of Louisiana of 1934 passed an Act known as Act No. 23 of 1934, a copy of which is hereto annexed and made part hereof and marked "Exhibit A". Said Act was approved by the Governor of Louisiana on July 12, 1934, and was duly promulgated in the Official Journal of the State of Louisiana on the 21st day of July, 1934. Section 27 of Article III of the Constitution of Louisiana of 1921 provides that "all laws enacted shall go into effect at twelve o'clock noon on the twentieth day after the legislature shall have adjourned." The 1934 session of the Louisiana Legislature adjourned on July 13, 1934.

X

Section 1 of said Act No. 23 of 1934 provides as follows:

"That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for advertising, whether printed or published in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2%) of the gross receipts of such business."

[fol. 6]

XI

That, while said statute purports to be a measure for the purpose of raising revenue from a license tax on the sale of advertising, said statute is in fact not such a revenue

measure at all, but is simply an attempted reprisal or punishment by the dominant political faction of the State—to which belong the Governor, the heads of various executive departments of the State, and a majority of the members of the State Legislature—against the daily press of the State for its past opposition, and a threat of further reprisals in the event of further or future oppositions; all in direct violation of the prohibitions against abridgement of the freedom of the press in both Federal and State Constitutions.

XII

The State of Louisiana has never heretofore attempted to impose a license tax on newspapers and newspapers have never been subject to the payment of a license tax. The annual revenue to the State of Louisiana from the said tax sought to be imposed by Act 23 of 1934, if enforceable, would be approximately $75,000.00, of which the legislature has dedicated $24,000.00 for cost of collection.

XIII

Petitioners aver that said Act 23 of 1934 is unconstitutional, null and void, and of no effect, for the following reasons, to-wit:

(1) It is violative of the provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, which require that license taxes must be levied on all persons engaged in the trade, business, occupation, vocation or profession upon which a license tax is imposed; and must be based on the gross receipts from such trade, business, etc.

(2) It is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

(3) It is violative of the provisions of Section 3 of Article I of the Constitution of Louisiana of 1921, that "no law shall ever be passed to curtail or restrain the liberty of speech or of the press."

(4) It is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United

States, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person [fol. 7] of life, liberty or property without due process of law", which amendment secures against State action that freedom of the press guaranteed by the First Amendment to the Constitution of the United States.

XIV

Act No. 23 of 1934 provides that all persons subject thereto shall, on the first day of October, 1934, and every three months thereafter, file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for its business during the preceding three months (except that the report due on October 1, 1934, shall be for the period from August 1 to September 30, 1934), and shall accompany such report with a remittance to said Supervisor of Public Accounts of the amount of the tax due as shown thereby. Said Act further provides that "the Supervisor of Public Accounts is authorized to audit and revise any report filed under this Act and assess additional taxes when and as shown to be due." Said Act further provides that delinquent taxes shall bear interest at the rate of one (1) per cent per month from their due date and that, "in case it becomes necessary to enforce payment of any tax due under this Act, the Supervisor of Public Accounts may institute suit in any court of competent jurisdiction, for the amount of the tax and interest, and may also include in such suit a demand for a penalty of twenty-five (25%) per cent of the amount of the tax and interest, as attorney's fees, which said penalty is hereby imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered."

XV

Section 9 of said Act 23 of 1934 provides as follows:

"It shall be unlawful for any person, firm, association or corporation, required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof, or any managing agent or officer of any such firm, association or corporation,

"1. To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

"2. To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

"And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

[fol. 8] "As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation.

"The venue of prosecutions and suits under this Act shall be the parish where the report was made or the tax computed by the taxpayer or the parish where the business was transacted or payment therefor received; but as to corporations not maintaining their records in this State, all such proceedings shall be brought at the domicile of their agents for service."

XVI

Section 10 of said Act 23 of 1934 provides as follows:

"For the purpose of enforcing the collection of the tax levied by this Act, the Supervisor of Public Accounts is hereby specifically authorized and empowered to examine, at all reasonable hours, the books, records and other documents of all persons, firms, associations or corporations who have transacted any of the business described in Section 1 hereof, or who are liable for any tax under this Act, or as to the business of whom there is levied the tax provided by this Act, in order to determine and provide for a correct check and ascertainment of the true amount due. In the event that any person, firm, association or corporation, or the employee, agent or officer of said firm, association or corporation shall refuse to permit such examina-

tion of such books, records and other documents by the Supervisor of Public Accounts as aforesaid, said officer may proceed by rule in chambers or in open court, in or out of term time, in any court of competent jurisdiction, in the parish where such refusal occurred, and require said person, firm, association or corporation, or employee, agent or officer of said firm, association, or corporation, to show cause why the Supervisor of Public Accounts should not be permitted to examine said books or records or documents; and in case said rule be made absolute, the same shall be considered a judgment of the Court and every violation thereof deemed a contempt of the Court to be punished according to law."

XVII

Plaintiffs show that they and each of them are without adequate remedy at law, since to fail to make the report to the Supervisor of Public Accounts required by said Act, or to fail to pay to the Supervisor of Public Accounts the tax sought to be imposed thereby and to have their rights determined in a prosecution for the violation of said Act, or in a suit to recover the tax sought to be imposed thereby, would necessarily postpone the final determination of the matter for many months, or possibly years, and, pending such determination, plaintiffs would be harassed by a multiplicity of suits in the Court of the State of Louisiana for failure to comply with said Act, and would subject themselves not only to the risk of being penalized in large amounts of money on account thereof, but, moreover, the managing agent or officer of each of plaintiffs would subject himself to the risk of numerous fines of Five Hundred ($500.00) Dollars each and of imprisonment for not exceeding six months for each failure to make the report required by said Act, or to pay the tax sought to be imposed thereby.

[fol. 9]

XVIII

Plaintiffs especially show that there is no provision of the law of Louisiana whereby they could pay said tax under protest and bring suit to recover same, and that if they paid said tax no recovery thereof can be had.

XIX

Petitioners allege that said Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, intends to attempt to enforce all of the provisions of said Act 23 of 1934 against petitioners, and will to that end exercise against petitioners all of the powers granted to her by said Act.

XX

Petitioners believe, and therefore allege, that it will not be practicable that a hearing on their application for an interlocutory injunction can be held, and a determination thereof reached, before October 1, 1934, on which date defendant may, under the terms of said Act 23 of 1934, proceed to enforce the provisions thereof; that, unless a temporary restraining order is granted herein, pending such hearing and determination, petitioners will suffer irreparable loss and damage.

XXI

Petitioners aver that this is a suit of a civil nature arising under the Constitution of the United States, brought by petitioners to redress the deprivation, under color of Act 23 of 1934 of the Legislature of Louisiana, of certain rights, privileges and immunities secured to petitioners by the Constitution of the United States; that the tax imposed by said Act as to each of petitioners except American-Press Company, Inc., Lafayette Advertiser-Gazette, Inc., and McCormick & Company, Inc., would amount to more than $3,000 per annum, exclusive of interest, costs, fines and penalties; that as to each of the latter three, the tax imposed by said Act, exclusive of interest and costs, but inclusive of fines and penalties imposed by said Act, would exceed the sum of $3,000 per annum; that it is impossible to place a specific monetary value on the business with which the enforcement of said statute will interfere and which petitioners seek to protect by this proceeding, and the damage caused to petitioners through the enforcement of said Act; but petitioners aver that such value and such damage will each far exceed the sum of $3,000 as to each of them.

[fol. 10] Wherefore, the premises considered, plaintiffs pray:

(1) That Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, be duly cited to appear and answer this petition, and that, after due proceedings had, there be judgment decreeing and setting aside said Act 23 of 1934, as unconstitutional, null and void, and permanently enjoining said Alice Lee Grosjean, her agents, attorneys, representatives, and any and all persons acting under her direction, control and authority, and each of them, from attempting in any manner whatsoever to enforce any of the provisions of said Act as against plaintiffs, or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

(2) That an order to show cause issue herein, directed to said Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, requiring her to appear and show cause why a preliminary injunction should not issue as herein prayed for, and that, on a hearing, plaintiffs be granted an interlocutory injunction pendente lite, enjoining and restraining said Alice Lee Grosjean, Supervisor of Public Accounts, her agents, attorneys, representatives, and any and all persons acting under her direction, control or authority, and each of them, from attempting, in any manner whatsoever, to enforce any of the provisions of said Act against plaintiffs or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them;

(3) That the hearing on the application for an interlocutory injunction herein be had on a date and at an hour to be fixed by the Court, and that the Court provide a hearing by three Judges as provided by law, after not less than five days' notice thereof to defendant, to the Honorable Oscar K. Allen, Governor of the State of Louisiana, and to the Honorable Gaston L. Porterie, Attorney General of Louisiana.

[fols. 11-14] (4) That a temporary restraining order be granted by the Court instanter, pending hearing on, and determination of, petitioners' application for an interlocutory injunction, enjoining and restraining said Alice Lee Grosjean, Supervisor of Public Accounts, her agents, attorneys, representatives, and any and all persons acting under her direction, control or authority, and each of them, from attempting, in any manner, whatsoever, to enforce any of the provisions of said Act against plaintiffs or any of them, or from seeking to collect from plaintiffs or any of them, by suit or otherwise, the taxes sought to be imposed by said Act or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

(5) Plaintiffs further pray for costs and for all general and equitable relief.

(Sgd.) Bennett C. Clark, Tucker & Mason, Mouton & Davidson, Deutch & Kerrigan & Burke, Spencer, Gidiere, Phelps & Dunbar, Taylor, Porter & Brooks, Thornton, Gist & Richey, Clement M. Moss, Attorneys for Petitioners. (Sgd.) J. J. Davidson, Jr., Eberhard P. Deutsch, John H. Tucker, Jr., Esmond Phelps, S. G. Thornton, Ben B. Taylor, of Counsel.

Duly sworn to by Clement M. Moss et al. Jurats omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—Filed Sept. 20, 1934

Whereas, in the above numbered and entitled cause, it appearing to the undersigned district judge that prima facie the plaintiffs are entitled to the relief sought on the ground that the provisions of Act 23 of the Legislature of Louisiana of 1934 are in violation of the provisions of the Constitution of Louisiana and the Constitution of the

United States, relied upon in said petition, and that the original petition herein contains a prayer for the issuance of a temporary restraining order, pending the hearing and determination of plaintiff's application for the issuance of an interlocutory injunction;

And it appearing to the undersigned district judge that there is danger of immediate, great and irreparable injury, loss and damage being caused to plaintiffs before the hearing and determination of said application for said interlocutory injunction can be had;

It is ordered that, upon the execution by plaintiffs of bonds in the sums hereinafter set forth, with good and solvent sureties and conditioned as required by law, to be approved by the Court, a temporary restraining order issue as prayed for in the petition, enjoining and restraining Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, her agents, attorneys, representatives and any and all persons acting under her direction, control or authority, and each of them, from attempting in any manner whatsoever to enforce the provisions of Act 23 of 1934 of the Legislature of Louisiana, as against plaintiffs or any of them or from seeking to collect from plaintiffs or any of them, by suit or otherwise, the taxes sought to be imposed by said act, or from requiring plaintiffs or any of them to make the reports required by said act, or from attempting, under the authority of said act, to examine any of the books, records or other documents of plaintiffs or any of them.

The amount of the bond to be given by each of the plaintiffs is as follows:

American Press Company, Five Hundred ($500.00) Dollars.

Capital City Press, Twelve Hundred ($1200.00) Dollars.

Item Company, Ltd., Forty-five Hundred ($4500.00) Dollars.

Journal Publishing Company, Inc., One Thousand ($1,000.00) Dollars.

[fol. 16] Lafayette Advertiser-Gazette, Inc., Two Hundred ($200.00) Dollars.

McCormick & Company, Inc., Five Hundred ($500.00) Dollars.

News-Star-World Publishing Co., Inc., Seven Hundred Fifty ($750.00) Dollars.

Times-Picayune Publishing Company, Sixty-five Hundred ($6500.00) Dollars.

Times Publishing Company, Ltd., Seventeen Hundred Fifty ($1750.00) Dollars.

This temporary restraining order is granted because it appears that there is immediate danger of great and irreparable damage being caused to plaintiffs before a hearing and determination of said application for said interlocutory can be had, particularly because of plaintiffs' liability to file reports and make payments under the statute herein claimed to be unconstitutional under the penalty of plaintiffs' being required to pay interest at the rate of 1% per month, plus 25% attorneys fees, on the aggregate amount of the tax and interest thereon, without recourse for a recovery of the amounts paid; and subject further to fines against plaintiffs and fines against and imprisonment of their officers and agents and a multiplicity of suits, both civil and criminal; all unless the defendant Alice Lee Grosjean is, pending such hearing and determination, restrained as herein set forth.

This restraining order shall expire ten days after its entry unless, within that time, the restraining order is extended for a like period for good cause shown, the reasons of said extension being entered of record.

It is further ordered that the application for a preliminary injunction herein be heard in the court room of the United States District Court at New Orleans, Louisiana, on the 29th day of September, 1934, at 10 o'clock A. M., before a statutory court of three judges to be convened under and in accordance with Section 266 of the United States Judicial Code, and that the defendant then and there show cause, if any she have or can, why the preliminary injunction prayed for should not issue; and that immediate notice of not less than five days of said hearing be given to Oscar K. Allen, Governor of the State of Louisiana, and Gaston L. Porterie, Attorney General of the State of Louisiana;

It is further ordered that a copy of this order, certified with the seal of this Court, be served on defendant, Alice Lee Grosjean.

(Signed) Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana.

New Orleans, Louisiana, September 20, 1934, 3:24 P. M.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF COUNSEL THAT THE TEMPORARY RESTRAINING ORDER REMAIN IN FULL FORCE AND EFFECT WITHOUT NECESSITY OF RENEWING SAME, ETC.—Filed September 28, 1934

It is hereby stipulated and agreed by and between American Press Company, Inc., and the other plaintiffs in the above entitled and numbered cause, through their undersigned counsel, and Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, defendant in said cause, through her undersigned counsel, that the temporary restraining order issued herein on September 20th, 1934, shall remain in full force and effect, without the necessity of the entry of any formal order renewing same, until the hearing by the statutory court of three Judges of the application of plaintiffs for a preliminary injunction.

(Signed) Spencer, Gidiere, Phelps & Dunbar, Attorneys for Plaintiffs. (Signed) Gaston L. Porterie, Attorney General of La., by Charles J. Rivet, Special Asst. to Attorney General, Attorney for Defendant.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ASSIGNING HEARING FOR PRELIMINARY INJUNCTION BEFORE A STATUTORY COURT OF THREE JUDGES—Filed Oct. 18, 1935

On consideration of the above entitled cause, it is ordered that the application for a preliminary injunction herein be heard in the court room of the United States District Court at New Orleans, Louisiana, on Friday, November 23, 1934, at 10 A. M., before a statutory court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorables Ben C. Dawkins and Wayne G. Borah, District Judges, which is hereby convened, and that the defendants be ordered then

and there to show cause, if any they can, why the preliminary injunction prayed for should not issue.

It is further ordered that immediate notice of not less than five days of said hearing be given to Oscar K. Allen, Governor of the State of Louisiana; Gaston L. Porterie, Attorney General of the State of Louisiana, and also to the defendant herein and other parties of record.

(Signed) Wayne G. Borah, Judge.

New Orleans, Louisiana, October 18, 1934.

[fol. 19] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

NOTE OF EVIDENCE ON BEHALF OF PLAINTIFF—Filed Nov. 23, 1934

Counsel for plaintiffs now offer, introduce and file in evidence the following exhibits:

(a) Affidavit of Frank A. Smith, Secretary-Treasurer of "American Press Co., Inc.", before Robert A. Faxon, Notary Public for the Parish of Calcasieu, Louisiana, under date of October 23, 1934.

(b) Affidavit of Charles P. Manship, President of "Capital City Press", before Robert C. Taylor, Notary Public for the Parish of East Baton Rouge, Louisiana, under date of October 19, 1934.

(c) Affidavit of James M. Thomson, President of "Item Company, Ltd.," before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 24, 1934.

(d) Affidavit of Douglas D. Attaway, President of "Journal Publishing Company, Inc.," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, under date of October 30, 1934.

(e) Affidavit of Thomas M. Callahan, Secretary-Treasurer of "Lafayette Advertiser-Gazette, Inc.," before J. J. Davidson, Jr., Notary Public for the Parish of Lafayette, Louisiana, under date of October 29, 1934.

(f) Affidavit of Hunter Jarreau, Secretary Treasurer of "McCormick & Company, Inc.," before Eleanor Twilley, Notary Public for the Parish of Rapides, Lousiana, under date of October 29, 1934.

(g) Affidavit of John D. Ewing, President of "News-Star-World Publishing Corporation," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, Louisiana, under date of October 30, 1934.

(h) Affidavit of Leonard K. Nicholson, President of "Times Picayune Publishing Company", before Sumter D. Marks, Jr., Notary Public for the Parish of Orleans, Louisiana, under date of October 26, 1934.

(i) Affidavit of John D. Ewing, President of "Times Publishing Co., Ltd.," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, Louisiana, under date of October 30, 1934.

(j) Affidavit of Marshall Ballard and J. Walker Ross, before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 10, 1934.

(k) Affidavit of Arthur G. Newmyer and John F. Times, Jr., before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 31, 1934.

(l) Affidavit of Howard Davis, before William A. Mod-
[fol. 20] ery, Notary Public for the County of New York, New York, under date of November 16, 1934.

(m) Affidavit of Carl W. Ackerman, before J. Edgar Swanin, Notary Public for the County of New York, New York, under date of November 20, 1934.

(n) The bill of complaint and annexed affidavits.

[fol. 21] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF FRANK A. SMITH—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, the undersigned authority, duly commissioned and qualified Notary Public in and for the Parish of Cal-

casieu, State of Louisiana, personally came and appeared Frank A. Smith, who, being first sworn, deposes and says:

That he is the Secretary-Treasurer of the "American Press Company, Inc.", one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said "American Press Company, Inc." is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Calcasieu, State of Louisiana, and is the owner and publisher of "The Lake Charles American Press", of which affiant is editor and manager.

That said newspaper is published in the City of Lake Charles, Parish of Calcasieu, Louisiana, on every afternoon except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto, or purchasers thereof, and from monies paid for the insertion of advertisements therein; that revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) per cent thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week; that said newspaper is in direct competition, both as to circulation and advertising, with the "Crowley Signal", a daily newspaper published at Crowley, Acadia Parish, Louisiana, which newspaper has a circulation of less than twenty thousand copies per week; that said competition centers in the various cities and towns between and near Lake Charles and Crowley, Louisiana, in — cities and town both newspapers have [fol. 22] substantial circulation; that said "Lake Charles American Press" has a substantial circulation in the parishes of Allen, Beauregard, Vermilion, Vernon, Jefferson Davis and Acadia, Louisiana, in which are published weekly newspapers which are in direct competition with "The Lake Charles American Press" both as to circulation and advertising; that there are published in DeQuincy, Calcasieu Parish, Louisiana, the "News" and at Sulphur, Calcasieu Parish, Louisiana, the "Southwest Builder", weekly newspaper, each having a circulation of less than twenty

thousand copies per week, and both of which are in direct competition with "The Lake Charles American Press".

That the gross receipts for the period from October 1st, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper published by American Press Company, Inc., are as follows:

October, 1933	$5,222.56
November, 1933	5,771.27
December, 1933	7,156.32
January, 1934	5,997.77
February, 1934	5,136.33
March, 1934	6,790.14
April, 1934	7,171.13
May, 1934	9,472.94
June, 1934	8,018.19
July, 1934	7,585.43
August, 1934	7,040.34
September, 1934	7,250.84
Total of 12-months period ending September 30, 1934	$82,613.26

That there is every indication that the gross receipts from advertising of the newspaper aforesaid for the twelve-month period ending September 30th, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30th, 1934.

(Signed) Frank A. Smith.

Sworn to and subscribed before me this 23 day of October, 1934.

(Signed) Robert R. Faxon, Notary Public. (Seal.)

[fol. 23] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF CHARLES P. MANSHIP—Filed Nov. 23rd, 1934

STATE OF LOUISIANA,

Parish of East Baton Rouge:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of East Baton Rouge, State of Louisiana, personally came and

appeared Charles P. Manship, who being first duly sworn deposes and says:

That he is the president of Capital City Press, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said Capital City Press is a corporation organized and existing under the laws of the State of Louisiana and domiciled in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and is the owner and publisher of the following newspapers: "State Times" and "Morning Advocate."

That the said State Times is published in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, on every evening, except Sundays, and the said Morning Advocate is published in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, on every morning, except Mondays; that the said State Times has a circulation of more than twenty thousand (20,000) copies per week within the State of Louisiana, but the weekly circulation of the said Morning Advocate within the State of Louisiana is slightly less than twenty thousand copies; that the revenues of the said newspapers are derived almost entirely from monies paid by regular subscribers to or purchasers thereof and from moneys paid for insertion of advertisements therein.

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by Capital City Press are as follows:

October, 1933	$19,495.94
[fol. 24] November, 1933	17,682.44
December, 1933	16,822.88
January, 1934	13,970.48
February, 1934	15,335.34
March, 1934	18,200.37
April, 1934	22,352.86
May, 1934	20,983.35
June, 1934	20,472.86
July, 1934	19,314.65
August, 1934	18,530.41
September, 1934	18,222.39
Total for 12 month period ending September 30, 1934	$221,384.02

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve month period ending September 30, 1935, will be in excess of the gross advertising revenue of such newspapers for the twelve month period ending September 30, 1934.

That since both the State Times and the Morning-Advocate are owned and published by Capital City Press, the books of Capital City Press do not segregate the revenues of said two papers, but all advertisements published in either of said papers are also published in the same manner and to the same extent in the other paper, except as to legal and judicial advertisements, which are published only in the State Times.

That the circulation of the said State Times is slightly in excess of 60,000 copies per week, and the circulation of the said Morning Advocate is slightly less than 20,000 copies per week; that, therefore, the weekly circulation of the Morning Advocate is less than one-fourth of the weekly circulation of the State Times, but, as previously stated, all legal and judicial advertisements published by the Capital City Press are published in the State Times alone and the above gross receipts of the said Capital City Press, given month by month, include the receipts from said legal and judicial advertisements inserted in the said State Times alone; that considering the volume of the circulation of said two newspapers, the quality of the two publications and the fact that all legal and judicial advertisements are published only in the State Times, if said gross revenues were segregated as between said two newspapers eighty-five per cent (85%) of said revenues would be allocated to the State Times and fifteen per cent (15%) of said revenues would be allocated to the Morning Advocate.

[fol. 25] That the revenues derived from circulation are a substantial portion of the total revenues, being in excess of eighten per cent (18%) thereof; that said newspapers compete both for circulation and advertisement with other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week.

That said newspapers are in direct competition, both as to circulation and advertising, with the "Hammond Courier", a daily newspaper published at Hammond, in the Parish of Tangipahoa, Louisiana, which newspaper has a

circulation of less than twenty thousand (20,000) copies per week.

That in the parishes adjoining or near the parish of East Baton Rouge, in which the State Times and Morning Advocate have circulation, there are published the following weekly newspapers, which weekly newspapers are published in the places shown opposite their respective names, viz:

The Hammond Vindicator, Hammond, Louisiana.
Southern Watchman, Clinton, Louisiana.
The Democrat, St. Francisville, Louisiana.
The Observer, Port Allen, Louisiana.
The Donaldsonville Chief, Donaldsonville, Louisiana.
Courier Journal, New Roads, Louisiana.
The Pointe Coupee Banner, New Roads, Louisiana.
The Iberville South, Plaquemine, Louisiana.
The Clarion News, Opelousas, Louisiana.
The Herald, Opelousas, Louisiana.
The Gonzales Weekly, Gonzales, Louisiana.
The News, Denham Springs, Louisiana.

That none of the said above named weekly newspapers have a circulation as great as twenty thousand (20,000) copies per week, and all of them are in direct competition with the said State Times and Morning Advocate, both as to circulation and advertising.

(Signed) Chas. P. Manship.

Sworn to and subscribed before me this 19th day of October, 1934. (Signed) Robert C. Taylor, Notary Public. (Seal.)

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title Omitted]

AFFIDAVIT OF JAMES M. THOMPSON—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish

of Orleans, State of Louisiana, personally came and appeared James M. Thomson, who, being first duly sworn deposes and says:

That he is President of the "Item Company, Ltd.," one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said "Item Company, Ltd.," is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Orleans, State of Louisiana, and is the owner and publisher of the following newspapers: "The New Orleans Item", published each week-day afternoon; "The Morning Tribune", published each week-day morning, and "The Item-Tribune", published each Sunday morning,.

That each of said newspapers is published in the City of New Orleans, Parish of Orleans, Louisiana, and each has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspapers are derived entirely from monies paid by regular subscribers thereto, or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) thereof; that said newspapers compete, both for circulation and advertising with other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week; that said newspapers have a circulation in practically every parish of the State of Louisiana in which daily and weekly newspapers are published, and is in direct competition with said publications; that the newspapers published by the Item Company, Ltd., have an average circulation of 6,250 copies per week in the Parish of Tangipahoa, Louisiana, in which "The Hammond Courier", a daily newspaper with a total average circulation of 13,446 copies per week is published; that there is accordingly substantial competition between said newspapers.

That the gross receipts for the period from October 1st, [fol. 27] 1933, to September, 1934, given month by month, from advertising in the aforesaid newspapers published by the Item Company, Ltd., were as follows:

1933.	
October	$ 85,293.06
November	87,693.02
December	101,131.34
1934.	
January	88,419.80
February	71,430.52
March	91,851.55
April	78,919.49
May	87,317.77
June	81,437.13
July	75,670.18
August	76,541.97
September	68,530.34
Total for twelve-month period ending September 30, 1934	$994,236.17

It is probable that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) James M. Thomson.

Subscribed and sworn to before me this 24th day of October, 1934. (Signed) Eberhard P. Deutsch, Notary Public. (Seal.)

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF DOUGLAS ATTAWAY—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana personally came and appeared Douglas Attaway, who being first duly sworn, deposed and says:

That he is the President of The Journal Publishing Company, Inc., one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Journal Publishing Company, Inc., is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Caddo, State of Louisiana, and is the owner and publisher of the following newspaper: Shreveport Journal.

That the said newspaper is published in the City of Shreveport, Parish of Caddo, State of Louisiana, on every afternoon, except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a daily newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Ruston Leader, both as to circulation and advertising; that there is published in the City of Shreveport, Caddo Parish, Louisiana, a semi-weekly publication called the Caddo Gazette, which is published every Tuesday and Friday by the Gazette Publishing Company, and the circulation of the said the Caddo Gazette is less than twenty thousand copies per week, that the said The Caddo Gazette is in direct competition with the Shreveport Journal, both as to circulation and advertising, particularly since it has been [fol. 29] declared a newspaper of general circulation by judgment of the First Judicial District Court in and for Caddo Parish, Louisiana.

That in all of the parishes of North Louisiana in which the Shreveport Journal has circulation, there are published

approximately thirty weekly and semi-weekly newspapers, all of which are in direct competion with the said Shreveport Journal, both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Bossier Banner, Benton, La.
Journal, Bernice, La.
Planters Press, Bossier City, La.
Record, Bunkie, La.
Chronicle, Colfax, La.
Citizen, Coushatta, La.
Enterprise, DeRidder, La.
Gazette, Farmerville, La.
Patriot, Glenmora, La.
News, Haynesville, La.
Guardian Journal, Homer, La.
Jackson Independent, Jonesboro, La.
Leader, Leesville, La.
Industrial Democrat, Leesville, La.
Interstate Progress, Logansport, La.
Enterprise, Mansfield, La.
Sabine Index, Many, La.
Herald, Minden, La.
Signal Tribune, Minden, La.
Enterprise, Natchitoches, La.
Times, Natchitoches, La.
American, Oakdale, La.
Journal, Oakdale, La.
Rapides Gazette, Pineville, La.
Progress, Plain Dealing, La.
Caddo Citizen, Vivian, La.
News-American, Winnfield, La.
Winn Parish Enterprise, Winnfield, La.

That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given by month, from advertising appearing in the aforesaid newspaper published by The Journal Publishing Company, are as follows:

1933.	
October	$18,418.70
November	18,403.73
December	20,333.64
1934.	
January	16,084.72
February	14,903.19
March	21,798.19
April	21,284.18
May	22,815.60
June	19,317.88
July	16,857.52
August	17,493.64
September	18,143.48
Total of twelve month period ending September 30, 1934	$225,854.47

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30, 1934.

(Signed) Douglas Attaway.

Sworn to and subscribed before me this 30th day of October, 1934.

(Signed) John H. Tucker, Notary Public.

[fol. 30] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF THOMAS M. CALLAHAN—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Lafayette:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Lafayette, State of Louisiana, personally came and ap-

peared Thomas M. Callahan, who being first duly sworn, deposes and says:

That he is the Secretary-Treasurer of the Lafayette Advertiser, Gazette, Inc., one of the plaintiffs in the above entitled and numbered suit; and makes this affidavit for use therein. That he is editor and publisher of the Daily Advertiser, a newspaper owned and published by the said Lafayette Advertiser Gazette, Inc., which said corporation is organized under the laws of the State of Louisiana and domiciled in the Parish of Lafayette, State of Louisiana.

That said newspaper is published in the City of Lafayette, Parish of Lafayette, Louisiana, on every afternoon, except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers to or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof.

That the gross revenues for the period from October 1st, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper by the Lafayette Advertiser Gazette, Inc., are as follows:

[fol. 31] October, 1933	$3,264.44	
November, 1933	6,561.97	Note "A"
December, 1933	3,400.72	
January, 1934	2,696.53	
February, 1934	2,403.24	
March, 1934	3,175.36	
April, 1934	3,217.72	
May, 1934	3,699.36	
June, 1934	3,249.97	
July, 1934	2,665.13	
August, 1934	2,795.35	
September, 1934	3,465.96	
Total of 12-month period ending September 30, 1934	$40,595.75	

Note "A"—Includes charges for publication of City and State delinquent taxes.

That there is every indication that the gross revenues from advertising of the newspaper aforesaid for the twelve-month period ending September 30th, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30th, 1934.

That said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that the Daily Advertiser, published by the Lafayette Advertiser Gazette, Inc., has a circulation in the Parish of Acadia, Louisiana, and in particular in the City of Crowley and the town of Rayne in the Parish of Acadia. That the Daily and Weekly Crowley Signal are published in the City of Crowley, Louisiana, both of which newspapers have a weekly circulation of less than twenty thousand copies per week and the said Daily Crowley Signal and Weekly Crowley Signal are both in direct competition with the said Daily Advertiser, both as to circulation and advertising. That there is published in the town of Rayne, in Acadia Parish, the Rayne Tribune, a weekly newspaper which is in direct competition with the Daily Advertiser, both as to circulation and advertising. That the Daily Advertiser maintains a delivery system in Rayne and in Crowley, Louisiana, and circulates throughout Acadia Parish. That the Crowley Signal circulates in Lafayette Parish.

There is published in the town of New Iberia, Parish of Iberia, Louisiana, the Enterprise and the Iberian, both [fol. 32] weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in New Iberia and the Enterprise and Iberian are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of St. Martinsville, Parish of St. Martin, Louisiana, The Banner and The Messenger, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in St. Martinsville and The Banner and The Messenger are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Abbeville, Parish of Vermilion, Louisiana, the Abbeville Meridional and the Abbeville Progress, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Abbeville and the Abbeville Meridional and the Abbeville Progress are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Opelousas, Parish of St. Landry, Louisiana, the Clarion News and the Herald, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Opelousas and the Clarion News and the Herald are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Jeanerette, Parish of Iberia, Louisiana, the Jeanerette Progress, a weekly newspaper having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Jeanerette and the Jeanerette Progress is in direct competition with the Daily Advertiser, both as to circulation and advertising.

That a substantial part of the circulation of the Daily Advertiser is in the parishes of St. Martin, Acadia, Iberia, Vermilion and St. Landry, which parishes completely sur- [fol. 33] round the Parish of Lafayette and in each of said parishes papers are published with circulation of less than twenty thousand copies per week, all in direct and substantial competition with the Daily Advertiser, both as to circulation and advertising.

(Signed) Thomas M. Callahan.

Sworn to and subscribed before me this 29 day of October, A. D. 1934.

(Signed) J. J. Davidson, Jr., Notary Public. (Seal.)

[fol. 34] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF HUNTER JARREAU—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Rapides:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Rapides, State of Louisiana, personally came and appeared Hunter Jarreau, who being first duly sworn, deposes and says:

That he is Secretary-Treasurer and Manager of McCormick & Company, Inc., one of the plaintiffs in the above numbered and entitled suit, and makes this affidavit for use therein; that said McCormick & Company, Inc., is a corporation organized under the laws of the State of Louisiana and domiciled in thte Parish of Rapides, State of Louisiana, and is the owner and publisher of the following newspaper, Alexandria Daily Town Talk; that said newspaper is published in the City of Alexandria, Parish of Rapides, Louisiana, on every afternoon except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from moneys paid by regular subscribers to or purchasers thereof, and from moneys paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Glenmora, Parish of Rapides, in which is published the Glenmora Patriot, a weekly newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Glenmora Patriot, both as to circulation and advertising, and including legal and judicial advertising; that the trade

area of the Alexandria Daily Town Talk, by which affiant means the area in which there is the most direct and substantial competition both as to circulation and advertising between the Alexandria Daily Town Talk and other newspapers, includes the following parishes in Louisiana; Rapides, Grant, Allen, Avoyelles, LaSalle, Vernon, Natchitoches, Winn, St. Landry, Evangeline and Catahoula, and that in said parishes are published certain newspapers at [fol. 35] the places and having the names hereinafter designated:

Bunkie Record, Bunkie, Avoyelles Parish, Louisiana.
Colfax Chronicle, Colfax, Grant Parish, Louisiana.
New Era, Efinice, Evangeline Parish, Louisiana.
Glenmora Patriot, Glenmora, Rapides Parish, Louisiana.
Catahoula News, Harrisonburg, Catahoula Parish, Louisiana.
Jena Times, Jena, LaSalle Parish, Louisiana.
Jonesville Booster, Jonesville, Catahoula Parish, Louisiana.
Kinder Tribune, Kinder, Allen Parish, Louisiana.
Leesville Leader, Leesville, Vernon Parish, Louisiana.
The Weekly News, Marksville, Avoyelles Parish, Louisiana.
Natchitoches Enterprise, Natchitoches, Natchitoches Parish, La.
Catholic Herald, Alexandria, Rapides Parish, Louisiana.
Oakdale American, Oakdale, Allen Parish, Louisiana.
Oakdale Journal, Oakdale, Allen Parish, Louisiana.
Opelousas Clarion-News, Opelousas, St. Landry Parish, Louisiana.
Pineville Gazette, Pineville, Rapides Parish, Louisiana.
Winnfield News-American, Winnfield, Winn Parish, Louisiana.
Winn Enterprise, Winnfield, Winn Parish, Louisiana.
Natchitoches Times, Natchitoches Parish, Louisiana.

that each of the above mentioned nineteen newspapers has a circulation of less than twenty thousand copies per week, and that there is competition between each of said papers and the Alexandria Daily Town Talk, both as to advertising and circulation; that said competition to which the Alexandria Daily Town Talk is subject is most substantial and direct with such of the above named papers as are pub-

lished in the following towns in Louisiana, Marksville, Winnfield, Bunkie, Jena, Colfax, Glenmora and Oakdale.

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising in the Alexandria Daily Town Talk, published by McCormick & Company, Inc., are as follows:

October, 1933	$7,057.30
November, 1933	8,022.36
December, 1933	8,298.84
January, 1934	7,417.07
February, 1934	7,306.84
March, 1934	6,721.72
April, 1934	7,338.97
May, 1934	8,297.36
June, 1934	8,824.92
July, 1934	8,074.56
August, 1934	8,226.50
September, 1934	7,425.85
Total in twelve months ending September 30, 1934	$93,012.29

That there is every indication that the gross receipts from advertising of said Alexandria Daily Town Talk for the twelve months period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-months period ending September 30, 1934.

(Signed) Hunter Jarreau.

Sworn to and subscribed before me this 29 day of October, 1934.

(Signed) Eleanor Twilley, Notary Public, Rapides Parish, Louisiana. (Seal.)

[fol. 36] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN D. EWING—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana, personally came and appeared, John D. Ewing, who being first duly sworn, deposes and says:

That he is President of the News-Star World Publishing Corporation, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the News-Star World Publishing Corporation is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Ouachita, State of Louisiana, and is the owner and publisher of the following newspapers published at Monroe, Ouachita Parish, Louisiana: The Monroe News-Star, which is published every week day evening except Saturday, with a circulation of more than twenty thousand copies per week within the State of Louisiana; the Monroe Morning World, which is published each week day morning except Monday, with a circulation of more than twenty thousand copies per week within the State of Louisiana; and the News-Star World, published each Sunday morning, with a circulation of less than twenty thousand copies per week within the State of Louisiana.

That the revenues of said newspapers are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circu*al*tion are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspapers compete, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspapers have a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a

daily newspaper having a weekly circulation of less than twenty thousand copies per week, which is in direct competition with the said Monroe News-Star, said Monroe [fol. 37] Morning World, and said News-Star World, both as to circulation and advertising.

That in all of the parishes of North Louisiana in which the Monroe News-Star, the Monroe Morning World, and the News-Star World have circulation, there are published approximately eighteen weekly and semi-weekly newspapers, all of which are in direct competition with the said Monroe News-Star, the Monroe Morning World, and the News-Star World, and both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Journal, Benton, La.
Gazette, Farmerville, La.
Concordia Sentinel, Ferriday, La.
Catahoula News, Harrisonburg, La.
Times, Jena, La.
Jackson Independent, Jonesboro, La.
Booster, Jonesboro, La.
Banner-Democrat, Lake Providence, La.
Herald, Minden, La.
Signal Tribune, Minden, La.
West Carroll Gazette, Oak Grove, La.
Richland Beacon-News, Rayville, La.
Leader, Ruston, La.
Madison Journal, Tallulah, La.
Ouachita Citizen, West Monroe, La.
Franklin Sun, Winnsboro, La.

That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by the News-Star-World Publishing Co., are as follows:

1933.

October	$18,191.66
November	13,397.41
December	11,001.10

1934.	
January	9,940.56
February	11,018.04
March	14,192.54
April	15,577.79
May	18,172.01
June	15,713.38
July	12,203.58
August	12,516.09
September	13,612.46
Total of twelve-month period ending September 30, 1934	$165,536.62

[fol. 38] That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) John D. Ewing.

Sworn to and subscribed before me this 30th day of October, 1934.

(Signed) John H. Tucker, Jr., Notary Public. (Seal.)

[fol. 39] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF LEONARD K. NICHOLSON—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and appeared Leonard K. Nicholson, who, being first duly sworn, deposes and says:

That he is President of The Times Picayune Publishing Company, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Times Picayune Publishing Company is a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana, and is the owner and publisher of "The Times Picayune" and "The New Orleans States", newspapers published each week-day morning and evening, respectively, and in combined form on Sunday morning, in the City of New Orleans.

That each of said newspapers has a circulatlon of more than 20,000 copies per week within the State of Louisiana; that the revenues of said newspapers are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) per cent thereof.

That both of said newspapers compete, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than 20,000 copies per week; that Hammond, Louisiana, is located in the Parish of Tangipahoa and in Hammond is published a daily newspaper known as "The Hammond Courier"; that "The Times Picayune" has a circulation in Hammond of approximately 5,200 copies per week and in the Parish of Tangipahoa of approximately 15,000 copies per week; that Crowley, Louisiana, is located in the Parish of Acadia and in Crowley is published a daily newspaper known as "The Crowley Signal"; that "The Times Pica- [fol. 40] yune" has a circulation in Crowley of approximately 4,000 copies per week and in the Parish of Acadia of approximately 6,500 copies per week; that the total circulation of "The Hammond Courier" is approximately 18,630 copies per week, and the total circulation of "The Crowley Signal" is approximately 13,182 copies per week; that "The Times Picayune" is in direct competition, both as to circulation and advertising, with "The Hammond Courier" and with "The Crowley Signal."

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by The Times Picayune Publishing Company are as follows:

1933	
October	$135,119.56
November	148,136.31
December	154,601.62
1934	
January	145,015.85
February	125,735.36
March	136,023.67
April	157,192.55
May	157,093.24
June	152,911.96
July	146,479.20
August	131,006.99
September	129,991.36
Total for the period from October 1, 1933, to September 30, 1934	$1,718,307.67

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenues of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) L. K. Nicholson.

Sworn to and subscribed before me this 27th day of October, 1934.

(Signed) Sumter D. Marks, Jr., Notary Public.
(Seal.)

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN D. EWING—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana, personally came and appeared

John D. Ewing, who being first duly sworn, deposes and says:

That he is the President of The Times Publishing Company, Ltd., one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Times Publishing Company, Ltd., is a corporation organized under the laws of the State of Louisiana, and domiciled in the Parish of Caddo, State of Louisiana, and is the owner and publisher of the following newspaper: The Shreveport Times.

That said newspaper is a morning newspaper published seven days of the week in the City of Shreveport, Parish of Caddo, Louisiana; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less [fol. 42] than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a daily newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Ruston Leader, both as to circulation and advertising; that there is published in the City of Shreveport, Caddo Parish, Louisiana, a semi-weekly publication called "The Caddo Gazette", which is published every Tuesday and Friday by the Gazette Publishing Company, and the circulation of the said The Caddo Gazette is in direct competition with The Shreveport Times, both as to circulation and advertising, particularly since it has been declared a newspaper of general circulation by judgment of the First Judicial District Court in and for Caddo Parish, Louisiana.

That in all of the parishes of north Louisiana in which The Shreveport Times has circulation, there are published approximately thirty (30) weekly and semi-weekly news-

papers, all of which are in direct competition with the said The Shreveport Times, both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Bossier Banner, Benton, La.
Journal, Bernice, La.
Planters Press, Bossier City, La.
Record, Bunkie, La.
Chronicle, Colfax, La.
Citizen, Coushatta, La.
Enterprise, DeRidder, La.
Gazette, Farmerville, La.
Patriot, Glenmore, La.
News, Haynesville, La.
Guardian Journal, Homer, La.
Jackson Independent, Jonesboro, La.
Leader, Leesville, La.
Industrial Democrat, Leesville, La.
Interstate Progress, Logansport, La.
Enterprise, Mansfield, La.
Sabine Index, Many, La.
Herald, Minden, La.
Signal-Tribune, Minden, La.
Enterprise, Natchitoches, La.
Times, Natchitoches, La.
American, Oakdale, La.
Journal, Oakdale, La.
Rapides Gazette, Pineville, La.
Progress, Plain Dealing, La.
Caddo Citizen, Vivian, La.
News-American, Winnfield, La.
Winn Parish Enterprise, Winnfield, La.

[fol. 43] That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper published by The Times Publishing Co., Ltd., are as follows:

Shreveport Times

October	$29,515.00
November	27,580.79
December	29,585.47
January	24,801.75
February	23,494.39
March	29,754.63
April	31,386.93
May	32,831.23
June	30,873.26
July	27,983.42
August	27,168.06
September	32,015.31
Total of 12-month period ending September 30, 1934	$346,990.24

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30th, 1934.

(Sgd.) John D. Ewing.

Sworn to and subscribed before me this 30th day of October, 1934.

(Sgd.) John H. Tucker, Jr., Notary Public.

[fol. 44] In United States District Court

[Title omitted]

Affidavit of Marshall Ballard and J. Walker Ross—Filed Nov. 23, 1934

State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and ap-

peared Marshall Ballard and J. Walker Ross, who, being first duly sworn, depose and say:

That affiant Ballard has been Editor-in-Chief of "The New Orleans Item" since 1907 and of "The Morning Tribune" since its inception in 1924; that affiant Ross has been on the editorial staff of "The New Orleans States" since 1885, and has been its Editor-in-Chief since 1908; that in their said capacities both affiants have followed closely and have been intimately familiar with the contemporaneous economic and political history of the State of Louisiana, including particularly recent events and trends.

That for some time prior to the convening of the regular session of the Legislature of Louisiana for the year 1934 on May 14, 1934, and throughout said session, all the newspapers published by the plaintiffs in this suit except "The Lake Charles American-Press" had been actively opposing, in their editorial policies, the dominant political faction in the State, being a branch of the national Democratic party within the State often referred to as the "Long Faction"; that said "American-Press," while never an open proponent of said faction, did not take an active editorial stand in opposition thereto until shortly after the convening of said regular session, since which time it has maintained an opposition policy.

[fol. 45] That said dominant State political faction has been headed, for some years, by Huey P. Long, ex-Governor of the State and present United States Senator from the State; that all of the executive departments of the State have been, since the year 1930, and are at present, controlled by said dominant faction; that the present Governor of the State, Oscar K. Allen, is a member, and one of the leaders, of said faction; that a majority of the members of the Legislature of 1934 were members of said faction during said session.

That said newspapers have, from time to time, in their editorials, criticized the political practices and policies of said dominant political faction severely, and for some time prior to, and during, the regular session of the State Legislature of 1934, there has been open and vigorous editorial opposition by said newspapers to the policies and practices of said political faction; that the leaders and various members of said faction, during said time, openly and vehe-

nently denounced said newspapers in political addresses, in speeches on the floor of the Legislature, and in circulars widely distributed through the employees of various State departments under their control, and threatened the newspapers with taxation on their advertising; that, during said regular session of the Legislature of 1934, after the introduction, and prior to the passage of, a bill to tax newspapers on their advertising (House Bill No. 345), a circular was issued over the names of Governor Oscar K. Allen and Senator Huey P. Long, containing the following:

"The lying newspapers are continuing a vicious campaign against giving the people a free right to vote. We managed to take care of that element here last week. A tax of 2% on what newspapers take in was placed upon them. That will help their lying some. Up to this time they have never paid any license to do business like everybody else does. It is a system that these big Louisiana [fol. 46] newspapers tell a lie every time they make a dollar. This tax should be called a tax on lying, 2¢ per lie."

That copies of said circular were widely distributed throughout the State, and a copy thereof was laid on the desk of each member of the Legislature during its regular session of 1934 while said bill was under consideration; that a copy of said circular is annexed to this affidavit.

That, on or about September 24, 1934, in a public address delivered in Sulphur, Calcasieu Parish, Louisiana, Senator Long, speaking for the dominant political faction of the State, of which he is head as hereinabove set forth, said:

"There was only one newspaper in the State that had not joined up with the gang opposing me, and that was the Lake Charles American Press. Well, we tried to find a way to exempt the Lake Charles American-Press from the advertising tax, but did not think we could do it, but we would have done it if we could."

That affiants make this affidavit for use in the above numbered and entitled suit.

(Sgd.) Marshall Ballard. (Sgd.) J. Walker Ross.

Sworn to and subscribed before me this 10th day of October, 1934.

(Sgd.) Eberhard P. Deutsch, Notary Public. (Seal.)

[fol. 47] EXHIBIT TO AFFIDAVIT

Circular Attached to Affidavit of Marshall Ballard and J. Walker Ross

"A man's a man for all that."

—Robert Burns.

Bill to Give Every Person Free Right to Vote Faces Final Show-down in Legislature—New Orleans Ringsters and Election Thugs Combine with Lying Newspapers and Big Money Interests to Keep Down the Size of the Common People Vote for Fear It Will Interfere with Their Rackets and Thievery

To the People of Louisiana:

The bill to relieve the people from having to pay poll taxes for the right to vote has been passed by the Senate. It must now be passed by the House of Representatives. The ringsters have ganged their forces to defeat it in the House. It takes a two-thirds majority to pass this bill in the House (we had the two-thirds in the Senate), because ths bill is a Constitutional Amendment and, if passed, must be voted upon by the people in November.

All that we are asking the parish representatives in the House to do is to let the people say if they do or do not want to repeal this old poll tax law of the dark ages that charges $1.00 each year against every man and woman who desires to vote in our elections.

The poll tax law exists in but a very few States. It was originally passed to keep the poor people (then called the rabble and riff-raff) from voting.

In the beginning of this country, no one could vote unless [fol. 48] he owned a large amount of property or had a certain amount of slaves or money. The common people finally forced most States to allow them to vote whether they had anything or not. There was considerable bloodshed in most cases to get that right for the common people to vote along with the well-to-do people. Those in control in Louisiana thought that the majority of the common people either would not care enough about voting to pay the dollar per year to do it, or else they would not have the dollar for the purpose. Therefore, they passed the poll tax law, hoping to control the election machinery in such

a way as not to be overwhelmed by the full will of the whole run of people.

Last week, in conversation with a member of the State Senate who had voted against repealing the poll tax bill, I said to him:

"Many of your people did not have the dollar last year or the year before to pay their poll taxes. Why would you make it inconvenient or a hardship on the man or woman who wants to exercise their right to vote? Don't you believe in a Democratic Government and in all the people having their equal say?"

To my surprise the answer came back like this:

"There are too many of the low-type people voting now. The poll tax ought to be raised so as to keep so many of them from voting in these elections. Most of them are not fit to participate in government."

I do not propose to give the name of the Senator making that remark. He is my personal friend, but that is the view of many men in public and private life today. They actually feel and in their hearts believe that the government is made to be run by a select few. Many of them feel that the common run of mankind is just a little bit better than the common run of cattle. You can find plenty of people who would sit up all night to nurse a high-class poodle dog and maybe keep the whole neighborhood awake for fear that "Fi-fi might sneeze again," but would not return on their heels to raise money for worthy human purposes.

[fol. 49] But this country has gotten away from that idea. It is a democracy. "A man's a man for all that."

Now the poll tax law is being fought mighty hard in the House of Representatives. It's another fight against human principle. There are many Sheriffs who urge that this poll tax law ought to be repealed. They say it is a burden upon them and upon their people, and that it does not do any good except to keep the masses from exercising a free and independent right to vote for whom they please. But there is another class of Sheriffs who have dug up money and paid the poll taxes of their friends and henchmen, and who know that the outside public who have not been on the payroll have had no such chance to protect themselves. That

class of Sheriffs feel that they have an advantage that they want to keep. There is a third class of Sheriffs and the Old New Orleans Ring who steal and pilfer poll taxes by the hundreds of thousands. There is no way to check up on them. Instead of having one poll tax book they print ten. They can let a man vote ten times in one day and keep an honest man from voting one time. That class of Sheriffs and the Old New Orleans Ring and gangsters do not want the poll tax law repealed for they have an advantage over the well-to-do people as well as the common run of people that they do not want to surrender.

It has been said by some that if everyone can vote in Louisiana without having to pay for it that it would "add 150,000 more votes to Huey Long's side." Those who are opposed to me in politics are being urged to vote against repealing the poll tax law on that account. That is a very poor excuse. If a man feels that a majority of the people of this country do not want him for an office he should not be permitted to force himself upon the people because he [fol. 50] has been able to manipulate poll tax fees. The government that truly represents the will of the people, that is run according to the wishes of the people, will last forever; but one that is used to stifle the people's wishes is sooner or later doomed to perdition.

Now, this poll tax bill must be acted upon in the House of Representatives on Tuesday or Wednesday of this week at the latest. Your representatives and your sheriffs should speak out on this matter. They will be in Baton Rouge at the Legislature by the time you receive this circular, but the people should find some way to get them word of their desire to vote on whether or not this poll tax law should be repealed. Make known your wishes to them quickly.

Again we warn against this clap-trap that to repeal the poll tax law will deprive the schools of money. It will do no such thing. All the poll taxes collected in this State amount to around $300,000.00 per year. That is not a drop in the bucket of the school money that the State raises for the schools every year, not enough to even mention. We raised many times that amount this year already. Schools are not going to exist unless the common people can continue to have a voice in the government. The right of the

common people to vote was what brought the public schools. Extend that right and you will extend the schools.

The lying newspapers are continuing a vicious campaign against giving the people a free right to vote. We managed to take care of that element here last week. A tax of 2% on what newspapers take in was placed upon them. That will help their lying some. Up to this time they have never paid any license to do business like everybody else does. It is a system that these big Louisiana newspapers tell a lie every time they make a dollar. This tax should [fol. 51] be called a tax on lying, 2¢ per lie. We also placed a small tax on the cotton exchange that will yield $500,000.00 per year to the people. The public utilities have been taxed 2% of their revenues, by another law we passed. It has been a vicious and hard fight. We will go a long way this session, much further than we thought we might be able to go. There will be a great deal more ground to cover to get all that is required for our people.

Our State Constitution has prohibited an income tax up to now. This week we mustered the two-thirds in the House to submit a Constitutional Amendment. It will pass the Senate. It merely taxes the man making big money a small per cent so as to relieve the poor man who makes very little. Our financial interests imbedded so many things in our State Constitution that all power is necessary to upset them. Louisiana was the world's worst controlled corporation State.

It is a known fact that the New Orleans Police is in the hands of the lowest-down thieves, thugs and racketeers on this continent. The dives and dens that rule that city are a shame on earth. Every person who does not contribute to their graft and politics or who fails them in any way may be hounded out of business or his home. They arrest people, throw them in cess-pool jails all night, refusing them bond, and often time keep them there for Saturday and Sunday, saying no bond can be fixed for one's release, while their drunken judges and recorders stay out of town on the Gulf Coast for the week end. They put bank robbers and gangsters in the cells with poor men and their wives to scare them to death and sometimes to beat them unmercifully. We have passed a law placing the police under a board composed of one each selected by Tulane

University, Loyola University, Central Trades and Labor [fol. 52] Council, New Orleans Athletic Association, Young Men's Business Club, Property Owners' Association, and Association of Commerce. This is to keep from having to take steps in that city to save the people there from the thugs and outlaws who are in charge. If the low-down drunkards and thugs on or off the ring benches try to carry their stealing and thuggery any further the law will out hereafter.

We are out 100% to relieve the burdens of the poor and for a redistribution of wealth. We were laughed at when the fight was started. Just take note what is happening and what will happen during the next few years and it is our bet that it will all be done. There will be no starvation in the land of plenty when our program succeeds. We propose to fight until it does succeed.

But we need the people to help us fight for their own rights and their own interest. Whoever tries to saddle them down with something that takes away from them their right to vote is standing in their way of a Democratic Government.

Get busy today. Work quickly. See to it that your sheriff is not opposing you in your right to vote without having to pay for it. But, above all, get word to your representative in Baton Rouge that you desire the right to vote on this matter as to whether you should or should not be made to pay $1.00 each year for the right to vote. There is not a moment to lose. Help us make your fight.

Yours sincerely, Huey P. Long, U. S. Senator. O. K. Allen, Governor.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ARTHUR G. NEWMYER and JOHN F. TIMS, JR.—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and ap-

peared: Arthur G. Newmyer and John F. Tims, Jr., who, being first duly sworn, depose and say:

I

That affiant Newmyer is General Manager of "Item Company, Ltd.," and that affiant Tims is Business Manager of "The Times Picayune Publishing Company"; that both affiants, in their respective capacities aforesaid, for many years have had, and now have, general supervision over advertising printed in the newspapers published by their respective companies; that for many years both affiants have been specialists in the business of newspaper advertising, and are generally conversant with said business, not only in the State of Louisiana but throughout the United States; that affiants are, and have been for many years, also conversant with other phases of the newspaper business both within and without the State of Louisiana; and that affiants are also conversant with other advertising media and have made studies thereof, insofar as these other ad- [fol. 54] vertising media compete with, and directly affect, newspaper advertising.

II

Affiants further state that there are no newspapers, magazines, periodicals, or other publications published within the State of Louisiana and having a circulation of more than 20,000 copies per week, except the following: "The Lake Charles American-Press", "The Baton Rouge State-Times", "The New Orleans Item", "The Morning Tribune", "The Item Tribune", "The Shreveport Journal", "The Daily Advertiser" of Lafayette, "Alexandria Daily Town Talk", "The Monroe Morning World", "The Times Picayune", "The New Orleans States", and "The Shreveport Times". There are, however, published within the State of Louisiana, certain other daily newspapers having a circulation of but slightly less than 20,000 copies per week, to-wit: "The Ruston Leader", published in the City of Ruston, Louisiana; "The Hammond Courier", published in the City of Hammond, Louisiana; "The Crowley Signal", published in the City of Crowley, Louisiana, and the "Morning Advocate", published in the City of Baton

Rouge, Louisiana. All of the newspapers last named compete with all of the newspapers first named, both as to circulation and advertising, except that the "Morning Advocate" does not compete with the Baton Rouge "State-Times", as both of said newspapers are owned by the same corporation.

III

Affiants further state that there are approximately 120 weekly newspapers published in the State of Louisiana and circulated throughout the State, but none of them has a cir- [fol. 55] culation of as much as 20,000 copies per week. Said weekly newspapers also compete with all of the newspapers heretofore mentioned, both as to circulation and advertising. There are approximately 163 publications published in the State of Louisiana selling and publishing advertising, and the 13 newspapers first above named are the only publications published within the State of Louisiana having a circulation of more than 20,000 copies per week.

IV

Affiants further state that throughout the United States, and in the State of Louisiana, there are six principal media of advertising, to-wit: (1) Newspaper advertising; (2) magazine advertising; (3) radio broadcast advertising; (4) outdoor advertising (principally billboards); (5) street car card advertising; and (6) motion picture advertising.

V

There is a corporation known as "Media Records, Inc.", with its principal office in the City of New York, which maintains a national service, and is the accepted authority on advertising measurements, and which regularly compiles and disseminates standardized statistics as to the volume of advertising in various media and publishes pamphlets, charts, books and special reports giving the data thus assembled, which data are universally accepted by advertisers, advertising agents, newspapers, other publications and media as authentic and authoritative. The statistics given by said "Media Records, Inc." as to the amount spent during the year 1933 throughout the United States for the various media of advertising are approximately as follows:

(1) Newspaper advertising	$453,000,000.00
(2) Magazine advertising	137,000,000.00
(3) Radio broadcast advertising	57,000,000.00
(4) Outdoor advertising	40,000,000.00
(5) Street car card advertising	11,000,000.00

[fol. 56] Said "Media Records, Inc.", did not give any data as to the amount spent during that year for motion picture advertising, but affiants have sufficient knowledge to express the belief that the annual amount spent for motion picture advertising throughout the United States in the year 1933 was less than $10,000,000.00. Said "Media Records, Inc.", is likewise authority for the statement that in the State of Louisiana the revenue derived by the various media of advertising is in the above ratio.

VI

Affiants further state that the revenues of the newspapers firstly named in this affidavit and all newspapers in general, and also of other publications, are derived almost entirely from monies paid by regular subscribers to, or purchasers of, said publications, and from monies paid for the insertion of advertisements in said publications; and that the revenue derived from circulation is a substantial part of the total revenue and varies materially in its ratio to advertising revenue with respect to particular publications. For instance, in the following examples of groups of newspapers the circulation figures in each group are, for comparative purposes, the same, while the percentages of advertising and circulation revenues to the total revenues vary materially in each case:

		Percentage of Revenue	
Newspaper	Circulation	Advertising	Circulation
"Alexandria Daily Town Talk"	8,263	66 2/3%	33 1/3%
"Monroe News-Star"	9,219	75%	25%
"Memphis Commercial Appeal"	113,478	60%	40%
"Washington Star"	112,324	82%	18%
"Denver Post"	137,744	58%	42%
"Indianapolis News"	129,256	77%	23%

VII

[fol. 57] Affiants further state that while volume of circulation is a factor in fixing advertising rates, it is only one of several factors; and that character of circulation, competitive conditions in the particular territory served by the

newspaper, economic conditions prevailing in the territory, and other factors are of great importance; that thus it frequently results that a daily newspaper with a much small volume of circulation than another has advertising rates as high as, and in some instances, considerably higher than, those of the other newspaper having greater circulation, and accordingly obtains an annual income from advertising published in its columns larger than that obtained by the other newspaper of greater circulation.

Thus, the following examples of two newspapers in each of several fields are given with their respective circulations, advertising rates, and advertising lineage carried during the year 1933:

	Circulation	Rate	Lineage
New York City			
"Herald Tribune"	317,697	72¢	6,616,209
"American"	337,238	65¢	6,426,347
Washington, D. C.			
"News"	67,083	18¢	3,908,102
"Herald"	94,250	15¢	3,502,775
Miami, Florida			
"News"	22,200	11¢	405,000
"Herald"	37,650	11¢	557,714
Dallas, Texas			
"Journal"	40,552	12¢	4,771,227
"Dispatch"	40,674	10¢	2,845,605
Baltimore, Md:			
"Sunday Sun"	177,283	50¢	4,078,142
"Sunday American"	198,645	35¢	2,979,280
[fol. 58]			
Boston, Mass.			
"Transcript"	33,605	25¢	3,697,022
"Post"	346,607	60¢	5,485,109
Detroit, Michigan			
"Sunday News"	268,972	55¢	3,037,032
"Sunday Times"	285,166	50¢	2,635,545

VIII

Affiants further state that the gross annual revenue to the State of Louisiana from the tax sought to be imposed by Act 23 of 1934, if enforceable, would be less than $80,000 on the basis of 1933 figures, inasmuch as the total gross annual advertising revenue of the 13 newspapers sought to be taxed by said act, plus the estimated revenue derived in the State of Louisiana for motion picture advertising was less than $4,000,000 for 1933.

IX

That affiants make this affidavit for use in the above entitled and numbered suit.

(Sgd.) A. G. Newmyer. (Sgd.) John F. Tims, Jr.

Sworn to and subscribed before me this 31 day of October, 1934.

(Sgd.) Eberhard P. Deutsch, Notary Public.

[fol. 59] In United States District Court

[Title omitted]

Affidavit of Howard Davis—Filed Nov. 23, 1934

State of New York,
County of New York, ss:

Howard Davis, being duly sworn, deposes and says:

I reside at 139 Pelhamdale Avenue, Pelham, in the County of Westchester and State of New York.

I have been engaged in the newspaper publication business for upwards of forty years, during most of that period in managerial and executive capacities.

I am and since 1931 have been the President and a director of the American Newspaper Publishers Association and before that date served it as Vice President and in other capacities.

The American Newspaper Publishers Association is a voluntary association, which has been in continuous existence since 1887 and the membership of which is composed of approximately five hundred daily newspapers published in and circulated throughout the United States.

I am and since its creation have been Chairman of the Code Authority for the Daily Newspaper Publishing Business. Pursuant to the provisions of the Code for the Daily Newspaper Publishing Business, which has been approved by the President of the United States under the National Industrial Recovery Act, approximately twelve hundred daily newspaper have assented to such Code.

I am and for the past fifteen and a half years have con-
[fol. 60] tinuously been Business Manager of the newspaper "New York Herald Tribune" (and its predecessor, the "New York Tribune"). During most of that period I have continuously been and still am a Vice President of New

York Tribune, Inc., a New York corporation, which is the owner and publisher of the "New York Herald Tribune" and was the owner and publisher of its predecessor, the "New York Tribune."

The "New York Herald Tribune" is a daily and Sunday newspaper published in the City of New York and having a circulation of over 300,000 copies daily and more than 400,000 on Sunday.

I am thoroughly familiar with the business of newspaper publication as carried on in the United States, with the interests and problems of daily newspapers in the United States and with the nature of their revenues and expenses.

The business of newspaper publishers is the gathering and dissemination of information in the form of news, editorial comment and advertising. Such newspapers are dependent in large measure for the conduct of their business on the revenue from the advertising published therein.

For many years it has been, and now is, the substantially, if not entirely universal, custom of the newspapers in the United States to sell their publications to subscribers and readers at far less than the cost of production, with the result that circulation revenue meets only a fraction of the cost which newspapers incur and must incur to perform the functions of the press.

In order to sell newspapers in that manner and so as to give the widest dissemination to the information which they [fols. 61 & 62] offer, it is necessary to depend on advertising revenues to meet the major cost of production. Any factor which affects advertising revenue correspondingly and directly affects the ability of newspapers to serve their readers and to perform their duties and functions to the public.

This affidavit is made for use in the above entitled suit.

(Sgd.) Howard Davis.

Subscribed and sworn to before me this 16th day of November, 1934.

(Sgd.) Wm. A. Modery, Notary Public, Queens County, No. 1988, Reg. No. 1459. Certificate filed in Nassau County, No. 6-M-15. Certificate filed in N. Y. Co., No. 274, Reg. No. 6-M-151. Kings County No. 123, Reg. No. 6152. Commission expires March 30, 1935. (Seal.)

[Authentication omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF CARL W. ACKERMAN—Filed Nov. 23, 1934

STATE OF NEW YORK,
County of New York, ss:

Carl W. Ackerman, being duly sworn, deposes and says:

I reside at 460 Riverside Drive, New York City, and am, and since July 1, 1931, have been, Dean of the Faculty of Journalism of Columbia University.

I am a graduate of Earlham College, Richmond, Indiana, A. B., A. M., and from the School of Journalism, Columbia University, New York City, with the degree of B. Litt.

After my graduation from Columbia University in June, 1913, I joined the staff of the United Press Association, an international news gathering association serving many hundreds of papers in the United States and abroad, becoming, respectively, Albany correspondent and reporter at the United States Senate and House of Representatives and the White House for that organization. In December, 1914, I was sent abroad as correspondent for the United Press, serving two years and two months as Manager of the Berlin Bureau, and returning to the United States when diplomatic relations were broken. From 1917 to 1921 I was special correspondent for the New York Tribune, the Saturday Evening Post, the New York Times and the Philadelphia Public Ledger in Mexico, the Orient and practically all countries in Europe west of Russia.

From 1922 until I became Dean of the Columbia School of Journalism, I was associated with a number of industrial corporations in the United States in an advisory capacity.

I am thoroughly familiar with the business of newspaper [fol. 64] publication as carried on in the United States, with the interests and problems of daily newspapers in the United States and with the nature of their revenues and expenses. During the course of my work, both before and after becoming Dean of the Columbia School of Journalism, I have had occasion to study freedom of the press in its governmental and social, as well as economic and legal aspects, both in this country and in Europe.

The business of newspaper publishers is the gathering and dissemination of information in the form of news, editorial comment and advertising. Newspapers are dependent in large measure for the conduct of their business on the revenue from the advertising published therein.

For many years, indeed from the time of their origin, it has been and now is the substantial, if not entirely universal custom of newspapers in the United States to sell their publications to subscribers and readers at far less than cost of production, with the result that circulation revenue meets only a fraction of the cost which newspapers incur, and must incur, in order to perform the functions of the press.

In order to sell newspapers in that manner and so as to give the widest dissemination to the information which they offer, it is necessary to depend on advertising revenue to meet the major cost of production. Any factor which affects advertising revenue correspondingly and directly affects the ability of newspapers to serve their readers and to perform their duties and functions to the public. Restriction by taxation of advertising is in practical effect as direct an economic burden upon press freedom as would be a tax measured by the number of news items or the space devoted to editorial comment.

[fol. 65] Since the year 1702, when the first daily newspaper was established in England, and 1704, when the first continuously published daily newspaper in the United States was started, advertising and news have been considered indispensible parts of a newspaper. Thus for more than two and a third centuries advertising and news have been universally considered in all democratic countries to be absolutely interdependent. The expansion of our news service and the growth of newspapers, not only in size, but in number and breadth of news coverage in the United States, have been dependent upon and grown hand in hand with increasing advertising revenues. As advertising has increased it has made it possible for the press to provide public information, indispensible in a democracy, not only day by day, but hour by hour, for the information and guidance of citizens everywhere.

If advertising revenue of the daily newspapers is in any way hampered or curtailed or endangered, it automatically

affects the ability of the newspaper to distribute public information.

This affidavit is made for use in the above entitled case.

(Sgd.) Carl W. Ackerman.

Sworn to before me this 20th day of November, 1934.

(Sgd.) J. Edgar Swanin, Notary Public, Kings County, Clerk's No. 60, Register's No. 6076. Certificates filed in New York County, Clerk's No. 216, Register's No. 6-S-151. Certificates filed in Westchester Co. Commission expires March 30, 1936. (Seal.)

[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS, TO STRIKE, AND ANSWER—Filed Nov. 23, 1934

Now into this Honorable Court comes the defendant, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, through Gaston L. Porterie, Attorney General of Louisiana, and Charles J. Rivet, Special Assistant to said Attorney General and Special Counsel for the said defendant, and for return and defense to the order rendered herein to show cause why the preliminary injunction prayed for should not issue, first moves to dismiss these proceedings and for grounds of such dismissal urges:

I

(a) The bill of complaint fails to affirmatively show that the disputed tax, constituting the amount in controversy herein, exceeds the sum of three thousand dollars as to each or any of the plaintiffs.

(b) The disputed tax, constituting the amount in controversy herein, is in fact less than three thousand dollars as to each or any of the plaintiffs.

II

The facts set forth in the bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, the restraining order issued herein should be recalled and vacated, the interlocutory injunction prayed for denied, and the bill dismissed at plaintiffs' costs.

[fol. 67]

III

In the alternative respondent moves that paragraphs VIII and XI of the bill of complaint be ordered stricken therefrom for the following reasons:

(a) Paragraph VIII is purely argumentative and contains no statement of ultimate facts. The matter contained in said paragraph is impertinent, and if not such is too general and uncertain to apprize respondent of what pertinent fact is meant to be averred.

(b) The matters contained in paragraph XI consist of conclusions which are impertinent, scandalous and libelous, and concern persons not connected with this suit. That even if considered as otherwise, said paragraph presents no justiciable matter.

IV

In the further alternative, defendant moves that the plaintiffs be required to make a further and better statement of the nature of their complaint, and be required to make more definite and certain the following matters stated in their bill of complaint:

(a) In paragraph IV plaintiffs state that there are published within the State certain other daily newspapers having a circulation but slightly less than 20,000 copies per week, and that these newspapers compete with the newspapers published by petitioners, both as to circulation and advertising. Plaintiffs should be required to state the names of said newspapers, their weekly circulation, or an approximation thereof, and the character of the competition, and the acts constituting the same.

[fol. 68] (b) In paragraph V plaintiffs state that there are in the State weekly newspapers, with circulation of less than 20,000 copies per week, competing with them. The plaintiffs should be required to identify the said newspapers, to give their circulation, or an approximation thereof, and the character of competition, and the acts constituting the same.

(c) The whole of paragraph VIII of plaintiffs' bill of complaint appears to be solely argumentative. If any pertinent ultimate facts are intended to be stated in said paragraph, plaintiffs should be required to make the same certain and definite.

(d) In paragraph XXI plaintiffs state that the tax complained of as to each of them, except three, would amount to more than three thousand dollars per annum, exclusive of interest, costs, fines and penalties; and that as to said three, said tax, with fines and penalties, would exceed three thousand dollars. Complainants should be required to state definitely, and with certainty, the computation upon which they predicate their conclusion.

V

And now, with full reservation of all rights under the foregoing motions, and without in any way abandoning or waiving the same, for further return to the order to show cause why an interlocutory injunction should not issue herein, defendant denies all of the facts and conclusions contained in plaintiffs' bill of complaint, except those as to her quality and domicile, and as to her purpose to perform the duties imposed upon her by the statutes of the State of Louisiana. More specifically:

[fol. 69] (a) Defendant admits paragraphs II and XIX of the bill of complaint.

(b) Defendant denies paragraphs IV, XI, XIII, XVII, XX and XXI of the bill of complaint.

(c) Defendant is without knowledge of the facts in paragraphs III, V, VI, VII, VIII and XII of the bill of complaint, and, therefore, denies the same.

(d) Defendant admits the facts in paragraph IX of the bill of complaint, except that she is without knowledge as to whether a copy of Act No. 23 of the Legislature of Louisiana of 1934 has been annexed to the bill of complaint, and does not know whether such copy, if so annexed, is a true and correct copy, and, therefore, denies said averment.

(e) Paragraphs X, XIV, XV and XVI of the bill of complaint consist solely of plaintiff's statements as to the con-

tents of Act 23 of the Louisiana Legislature of 1934, and of alleged quotations of sections of said statute; that the said legislative act speaks for itself and that no statement as to the contents thereof, or any alleged quotation therefrom, made by plaintiffs can change or alter the said statute. Defendant nevertheless denies that paragraph X contains a correct quotation from Section 1 of the said statute.

Defendant reiterates her denial that the matter herein in controversy exceeds the sum or value of three thousand dollars; and avers that the disputed tax, the collection of which is sought to be enjoined, as to each of the plaintiffs, is less than the sum of three thousand dollars.

Respondent denies that the plaintiffs, or either of them, are or ever were in danger of suffering any irreparable or [fol. 70] other loss or injury due to any action which she might take under the provisions of Act 23 of the Louisiana Legislature of 1934; and denies that said statute violates any provision of the Federal Constitution or of the Constitution of the State of Louisiana. She avers, on the contrary, that the statute is a legitimate and valid exercise of the taxing power of the State of Louisiana; that the classification adopted by its Legislature is a rational one, consonant with classifications made in the newspaper and advertising business; that newspapers in Louisiana having a circulation of 20,000 copies, or less, constitute a class of country journals, with little equipment, few employees and small assets, which use methods of operation entirely different to the metropolitan newspapers operating in the State and having a circulation of more than 20,000 copies per week. Respondent denies that said two classes are in competition in the business of selling advertising, and avers, on the contrary, that said class of small journals are not recognized as advertising media by the large advertisers and the advertising agencies of this country.

Defendant further shows that by the restraining order granted herein she, as an officer of the State of Louisiana, and said State of Louisiana have been deprived of the rights granted by the Act of Congress of March 4, 1913, amending Section 266 of the Judicial Code, which provides:

"That if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to en-

force such statute or order, accompanied by a stay in such State court of proceedings under such statute or order [fol. 71] pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State."

Respondent further shows that this cause presents a controversy in personam, and that no injunction should issue herein to preclude respondent from bringing any action in personam against the plaintiffs in any court of the State of Louisiana, or in any court of concurrent jurisdiction.

Respondent also shows that no injunction should issue herein which would deprive her, or the State of Louisiana, of any rights under Section 266 of the Judicial Code, as amended.

Wherefore, respondent prays that the restraining order issued herein be recalled and vacated; that the interlocutory injunction prayed for be denied, and that plaintiff's bill of complaint be dismissed at their costs.

(Sgd.) Gaston L. Porterie, Att'y-Gen'l of Louisiana;
(Sgd.) Chas. J. Rivet, Specl. Asst. to Att'y-Gen'l of La. and Specl. Counsel for Respondent, Attys. for Respondent.

Duly sworn to by Gaston L. Porterie. Jurat omitted in printing.

[fol. 72] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. H. WADE—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared J. H. Wade, who, after being duly sworn deposes and says:

That he is a resident and a citizen of the State of Louisiana, his domicile being in the Town of Port Allen, Parish of West Baton Rouge, in said State; that he is forty years

of age, married and a man of family, and is engaged in country newspaper work, being the owner and publisher of the Port Allen Observer, a weekly newspaper issued out and from the Town of Port Allen, above Parish and State.

That since his boyhood age of twelve, with the exception of time served in the Army during the World War, he has done work in and about the newspaper office, six years of which period was devoted to mechanical work in city newspapers.

That the country press, in his opinion, has suffered its loss of national (foreign) advertising to the daily newspapers through several contributing factors:

1. Good roads and automobiles facilitate a faster distribution of the daily newspaper, bringing to practically every rural home the world dispatches of the great news associations, such as the Associated Press and other wire services.

2. The daily press, because of its frequency of publication, easily obtains the services of the large advertising agencies, who usually receive a commission of 15% of all advertising placed. These agencies, in most part, such as N. W. Ayer & Son, Lord, Thomas & Logan, etc., represent at the same time the large national advertisers, the tobacco companies, the automobile concerns and, lately, the great breweries and distilleries who are spending millions [fol. 73] for advertising.

3. The radio with its nation-wide hook-up systems is taking a large amount of advertising from the country press.

Very few country newspapers could have survived in the past few years if it had not been for the legal printing, such as from the police jury, the school board and sheriff sales, etc., in many instances that work being done at a price less than one-half the price fixed by statute.

My approximate capital investment (replacement value) is Fifteen Thousand ($15,000.00) Dollars. An approximate statement of my yearly revenues and expenditures is as follows:

Revenues

Subscriptions	$400.00	
Job printing	1,000.00	
Commercial advertising	300.00	
Legal advertising	2,080.00	
Total		$3,780.00

Expenditures

Labor	$936.00	
Stock	600.00	
Rent	300.00	
Power, etc	600.00	
Total		$2,436.00
Profit		$1,244.00

I am of the opinion that the day is fast approaching when the country press will be gone, especially in those parishes where there are no large towns. Some publishers argue that the job printing departments will hold them up, but I think that the mail order printer concerns of the large cities will eventually take the greater portion of their work because of their ability to do it cheaper.

(Sgd.) J. H. Wade.

Sworn to and subscribed before me this, the 22nd day of November, A. D. 1934 (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 74] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. H. WADE—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared J. H. Wade, who, after being duly sworn, deposes and says:

That he is a resident and a citizen of the State of Louisiana, his domicile being in the Town of Port Allen, Parish of West Baton Rouge, in said State; that he is forty years of age, married and a man of family, and is engaged in

country newspaper work, being the owner and publisher of the Port Allen Observer, a weekly newspaper issued out and from the Town of Port Allen, above Parish and State.

That since his boyhood age of twelve, with the exception of time served in the Army during the World War, he has done work in and about the newspaper office, six years of which period was devoted to mechanical work in city newspapers.

That he is familiar with Ayer's Directory of Newspapers and Periodicals, an annual compilation, and the recognized key to the publishing industry.

That he has made an examination of the said sixty-sixth compilation, being the one for the year 1934, and that the extract hereinbelow is a truly and correct one from said 1934 volume, showing the weekly circulation of the weekly newspapers and the daily circulation of the daily newspapers of the State of Louisiana opposite the name of each newspaper and its place of publication:

[fol. 75]

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume of Such Circulation:

Place	Name	Kind	Circulation
Abbeville	Progress	Weekly	800
Abbeville	Meridional	Weekly	1,000
Alexandria	Town Talk	Daily ex. Sun	8,283
		Weekly	603
Amite	Progress	Weekly	3,690
Arabi	St. Bernard Voice	Weekly	615
Arcadia	Bienville Democrat	Weekly	.....
Bastrop	Morehouse Enterprise	Weekly	941
Baton Rouge	Advocate	Daily ex. Mon	2,525
		Sunday	4,396
Baton Rouge	Journal of the Louisiana Teachers' Association	Monthly	.....
Baton Rouge	Louisiana Farm Bureau News	Semi-monthly	.....
Baton Rouge	Reveille	Weekly	1,701
Baton Rouge	Rice Journal	Monthly	7,060
Baton Rouge	State Times	Daily ex. Sun	9,429
Benton	Bossier Banner	Weekly	775
Bernice	Journal	Weekly	.....
Bogalusa	Enterprise and American	Weekly	6,750
Bogalusa	News	Weekly	3,310
Bossier City	Planters Press	Weekly	1,050
Bunkie	Record	Weekly	1,972
Clinton	Watchman	Weekly	.....
Colfax	Chronicle	Weekly	1,450
Columbia	Caldwell Watchman	Weekly	750
Convent	Interim	Weekly	335
Coushatta	Citizen	Weekly	625
Covington	St. Tammany Farmer	Weekly	2,690
Crowley	Acadian-Signal	Weekly	950
Crowley	Signal	Daily ex. Sun	2,294

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

Place	Name	Kind	Circulation
Denham Springs	News	Weekly	1,550
DeQuincy	News	Weekly	.....
[fol. 75½]			
DeRidder	Enterprise	Weekly	1,548
Donaldsonville	Chief	Weekly	1,200
Eunice	New Era	Weekly	2,670
Farmerville	Gazette	Weekly	1,100
Ferriday	Concordia	Weekly	.....
Franklin	Banner-Tribune	Weekly	900
Franklinton	Era-Leader	Weekly	.....
Glenmora	Patriot	Weekly	724
Gonzales	Gonzales Weekly	Weekly	.....
Greensburg	St. Helena Echo	Weekly	630
Gretna	Jefferson Democrat	Weekly	.....
Gretna	Jefferson News	Weekly	4,570
Gueydan	News	Weekly	225
Hahnville	St. Charles Herald	Weekly	.....
Hammond	Courier	Daily ex. Sun	2,241
Hammond	Vindicator	Weekly	2,250
Harrisonburg	Catahoula News	Weekly	2,400
Haynesville	News	Weekly	2,250
Homer	Guardian-Journal	Weekly	2,329
Houma	Courier	Weekly	.....
Houma	Times	Weekly	800
Jeanerette	Progress	Weekly	615
Jena	Times	Weekly	1,705
Jennings	Jeff Davis Parish News	Semi-Weekly	1,809
Jonesboro	Jackson Independent	Weekly	.....
Jonesville	Booster	Weekly	.....
Kaplan	Times	Weekly	215
Kentwood	Commercial	Weekly	2,175
Kinder	Tribune	Weekly	.....
Lafayette	Advertiser	Daily ex. Sun	4,170
Lafayette	Benevolent News	Monthly	15,000
Lafayette	Vermilion	Weekly	1,000
Lake Arthur	News	Weekly	238
Lake Charles	American-Press	Daily ex. Sun	5,729
Lake Charles	American-Press	Weekly	639
Lake Providence	Banner-Democrat	Weekly	.....
LaPlace	St. John Herald	Weekly (Combined)	1,774
Lutcher	St. James Voice	Weekly (Combined)	
Norco	St. Charles News	Weekly (Combined)	
[fol. 76]			
Leesville	Leader	Weekly	2,500
Leesville	Industrial Democrat	Weekly	1,373
Logansport	Interstate Progress	Weekly	.....
Lucy	Meschacebe	Weekly	375
Mansfield	Enterprise	Weekly	1,200
Many	Sabine Index	Weekly	2,250
Marksville	News	Weekly	900
Minden	Herald	Weekly	3,160
Minden	Signal-Tribune	Weekly	3,025
Monroe	News-Star	Daily ex. Sat	9,219
Monroe	World	Daily ex. Sun	7,948
Monroe	World-News-Star	Weekly	13,776
Morgan City	Review	Semi-weekly	1,280
Napoleonville	Assumption Pioneer	Weekly	.....
Natchitoches	Current Sauce	Fortnightly	.....
Natchitoches	Enterprise	Weekly	1,500
Natchitoches	Times	Weekly	2,160

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

Place	Name	Kind	Circulation
New Iberia	Enterprise	Weekly	.....
New Iberia	Iberian	Weekly	1,751
Newllano	Llano Colonist	Weekly	2,250
New Orleans	Algiers Herald	Weekly	4,370
New Orleans	American Insurer	Monthly	.....
New Orleans	Bulletin Daily	Daily ex. Sun	.....
New Orleans	Catholic Action of the South	Monthly	8,650
New Orleans	Christian Advocate (Southwestern edition) (Negro)	Weekly	5,505
New Orleans	Cotton Trade Journal	Weekly	2,828
New Orleans	Courier	Semi-monthly	6,800
New Orleans	Dental Delegate	Monthly	17,000
New Orleans	Double-Dealer	Monthly	.....
New Orleans	Federationist	Weekly	8,415
New Orleans	H. A. Monthly	Semi-monthly	.....
New Orleans	Hotel and Club Record	Monthly	.....
New Orleans	Item	Daily ex. Sun	58,091 (Sat. 45,018)
New Orleans	Item-Tribune	Sunday	73,445
New Orleans	Jewish Ledger	Weekly	6,400
New Orleans	Journal of Commerce	Daily ex. Sun	.....
New Orleans	Lawyer and Banker and Central Law Journal	Bi-monthly	25,300
New Orleans	Louisiana Grocer	Monthly	.....
New Orleans	Louisiana Pythian	Monthly	.....
New Orleans	Maroon	Weekly	2,000
New Orleans	Modern Druggist	Monthly	2,000
New Orleans	Newcomb Arcade	Four times	.....
New Orleans	New Orleans Christian Advocate	Weekly	6,300

[fol. 77]

New Orleans	New Orleans Medical and Surgical Journal	Monthly	2,130
New Orleans	Official Court Record	Daily ex. Sun	.....
New Orleans	Proceedings of the Louisiana Engineering Society	Bi-monthly	625
New Orleans	Southern Plumber	Monthly	.....
New Orleans	Square and Compasses	Monthly	6,560
New Orleans	States	Daily ex. Sun	35,048 (Sat. 25,470)
New Orleans	Sugar Bulletin	Semi-monthly	1,750
New Orleans	Times Picayune	Daily	94,401
New Orleans	Tribune	Daily ex. Sun	37,069
New Orleans	Tulane Hullabaloo	Weekly	2,500
New Orleans	Voce Coloniale	Weekly	.....
New Roads	Parish Courier Journal	Weekly	.....
	Pointe Coupee Banner	Weekly	.....
Oakdale	American	Weekly	1,350
Oakdale	Journal	Weekly	1,085
Oak Grove	West Carroll Gazette	Weekly	1,412
Opelousas	Clarion News	Weekly	.....
Opelousas	Herald	Semi-Weekly	2,430
Pineville	Rapides Gazette	Weekly	1,458
Pineville	Wildcat	Weekly	400
Plain Dealing	Progress	Weekly	1,200
Plaquemine	Iberville South	Weekly	2,000
Point A. La Hache	Plaquemines Gazette	Weekly	405
Ponchatoula	Enterprise	Weekly	1,200
Port Allen	Observer	Weekly	1,314
Rayne	Tribune	Weekly	1,240
Rayville	Richland Beacon-News	Weekly	.....

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

Place	Name	Kind	Circulation
Reserve	L'Observateur	Weekly	.....
Roseland	Herald	Weekly	450
Ruston	Leader	Daily ex. Sun	1,195
Ruston	Leader	Weekly	1,500
Ruston	Tech Talk	Friday (Weekly)	1,300
Saint Francisville	Democrat	Weekly	.....
Saint Joseph	Tensas Gazette	Weekly	600
St. Martinville	Messenger	Weekly	425
St. Martinville	St. Martin Banner	Weekly	840
[fol. 78]			
Shreveport	Baptist Message	Weekly	20,274
Shreveport	Centenary Conglomerate	Weekly	800
Shreveport	Journal	Daily ex. Sun	22,187
Shreveport	Sun (Negro)	Weekly	9,522
Shreveport	Times	Daily	29,083
		Sunday	41,617
Slidell	News	Weekly	1,750
Tallulah	Madison Journal	Weekly	540
Thibodaux	Commercial Journal	Weekly	.....
Thibodaux	Lafourche Comet	Weekly	1,200
Thibodaux	Lafourche Monitor (Negro)	Weekly	.....
Ville Platte	Gazette	Weekly	.....
Vivian	Caddo Citizen	Weekly	722
Welsh	Rice Belt Journal	Weekly	750
West Monroe	Ouachita Citizen	Weekly	450
Winnfield	News-American	Weekly	1,500
Winnfield	Winn Parish Enterprise	Weekly	1,650
Winnsboro	Franklin Sun	Weekly	1,971

(Sgd.) J. H. Wade.

Sworn to and subscribed before me this, the 22nd day of November, 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 79] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CHARLES J. RIVET—Filed Nov. 23, 1934

Charles J. Rivet, being duly sworn, did depose and say that he is an attorney-at-law duly licensed to practice in the Courts of the State of Louisiana.

That he was counsel for the officer acting for and on behalf of said State in each of the cases hereinafter mentioned from the incipiency of said matters until the final determination thereof. That all of said cases involved the validity of taxes sought to be collected on behalf of the State of Louisiana, and he makes this affidavit to show the

delay that elapsed from the institution of the actions until the decree of the Supreme Court, on appeal.

The case of State v. Chicago Hat Works was instituted in the Civil District Court for the Parish of Orleans on October 29, 1931; judgment of that Court was rendered November 16, 1931. The decree of the Supreme Court of Louisiana, the Court of final resort in that State, was rendered April 25, 1932. (Reported 141 So. 844, 174 La. 814.)

The case of State v. Milan Grain & Milling Co. was instituted in the Civil District Court for the Parish of Orleans on May 19, 1932; judgment of that Court was rendered June 10, 1932. The decree of the Supreme Court of Louisiana was rendered January 3, 1933. (Reported 146 So. 47, 176 La. 539.)

The case of State v. National Window Cleaning Co. was instituted in the Civil District Court for the Parish of Orleans on May 6, 1932; judgment of that Court was rendered June 6, 1932. The decree of the Supreme Court of Louisiana was rendered January 3, 1933. (Reported 145 So. 673, 176 La. 318.)

The case of State v. Leon Heymann was instituted in the Civil District Court for the Parish of Orleans on June 1, 1933; judgment of that Court was rendered on June 23, [fol. 80] 1933. The decree of the Supreme Court of Louisiana was rendered November 27, 1933. (Reported 151 So. 901, 178 La. 479.)

The case of Conway v. Lane Cotton Mills Co. was instituted in the Civil District Court for the Parish of Orleans on September 15, 1933; judgment of that Court was rendered October 18, 1933. The decree of the Supreme Court of Louisiana was rendered December 21, 1933. (Reported 152 So. 312, 178 La. 626.)

The case of State v. Wesson Oil & Snowdrift Co., Inc., was instituted in the Civil District Court for the Parish of Orleans on May 7, 1934; judgment of that Court was rendered on July 10, 1934. The decree of the Supreme Court of Louisiana was rendered October 29, 1934. (Not yet reported.)

In the year 1933 the Supreme Court of the State of Louisiana was in vacation from July 14, 1933, to October 3, 1933.

In the year 1934 the Supreme Court of the State of Louisiana was in vacation from July 2, 1934, to October 1, 1934.

All suits involving the constitutionality of a tax, or where

the collection of a tax is delayed, or the public fisc or the public interest is involved, or where the State or any subdivision or agency of the State is a party are entitled to be docketed by preference in the Supreme Court of the State of Louisiana, under Section 3, Rule 9, of said Court. See 171 La., p. X.

(Sgd.) Chas. J. Rivet.

Sworn to and subscribed before me, this 23rd day of November, A. D. 1934.

(Sgd.) P. H. Stern, Not. Pub. (Seal.)

[fol. 81] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF FRANK C. CHEKAL—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Frank C. Chekal, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Vivian, Parish of Caddo, State of Louisiana, age fifty-eight years. I have been in the newspaper business for thirty-four years, twenty-four years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Caddo Citizen, a weekly newspaper printed and issued out of my establishment in the Town of Vivian, Parish of Caddo, State of Louisiana. I have been in charge of this newspaper for the last four years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Camel cigarettes, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly

paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper. [fol. 82] The daily papers throughout the State of Louisiana and, in my case, from the States of Arkansas and Texas, have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisements, include in the advertisement a listing of my own Vivian merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is a very limited business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including town lot, newspaper building, printing and equipment, is $6,500.00.

Annual income from all sources, approximately $4,500.00, which leaves no profit and very small allowance for personal salaries.

To operate my business, I do all the work I can myself. My wife does part of the writing, proof-reading, and attends to some collections. The only force in addition to my wife and myself which I employ consists of one apprentice.

The country papers of the State, because of local requirements and economic necessity, are doing the printing for the towns in which they live at less than the prices which the law allows, and in many cases these public accounts must be carried for an indefinite time.

(Sgd.) Frank C. Chekal.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 83] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HOWARD D. STROTHER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Howard D. Strother, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the City of Eunice, Parish of St. Landry, State of Louisiana; age, twenty-nine years; I have been in the newspaper business from youth, fifteen years of which were spent in country work and four years of which were spent in city work.

I control a majority of the stock of The New Era, a weekly newspaper printed and issued out of the plant of The New Era Publishing Co., Inc., in the City of Eunice, Parish of St. Landry, State of Louisiana. I have been in charge of this newspaper for the last seven years.

Several years ago rural publications did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement. Commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. [fol. 84] In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper. For instance, in the case of our paper, The New Era, Eunice, Louisiana, we

have lost the greatest portion of our foreign advertising lineage, as described, through numerous invasions of the New Orleans and other Louisiana dailies, who, it is alleged, have followed the custom of national dailies, in asserting that their coverage is in excess to that of our publication and other country weeklies; such information coming to us from The American Press Association, one of our national advertising agencies, who claim that this condition exists generally. In addition to the above facts, some of these daily publications of Louisiana circulate in portions of Mississippi, and enjoy a fair circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to us, the Crowley Signal, the Lafayette Advertiser, and the Lake Charles American Press have been reported to claim a circulation as great as our own within our own territory and offer a substantial circulation in all the parishes around the cities in which they are published. These dailies have taken considerable foreign national advertising from our and other weekly publications in our immediate territory. In making this statement we are merely reciting the history of our foreign advertising loss and condition in our territory during the last five years. The situation is that today we have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this [fol. 85] scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

Our loss of foreign advertisement has gone so far as this: The daily papers in the running of foreign advertising, such as automobile and radio advertising for instance, include in the advertisement a listing of our own business institutions. As a consequence, there is less opportunity for us to get advertising from our local auto and radio dealers. The country newspapers, if they depended upon foreign advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including fixtures, stock and equipment, is $17,500.00.

To operate our business, I do all the work I can myself. I assist in keeping books, help in the mechanical department, solicit advertising, prepare news stories, read proof, and do other work in connection with the business. I attend to general collections, my wife and other relatives assisting. Our entire force, receiving pay, numbers only four, and one apprentice.

Our general opinion is that country newspapers are obtaining a goodly portion of their gross receipts from legal printing, municipal and parochial. Our opinion is this revenue in many instances represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at Ville Platte the city printing was done for a small monthly fee per year and for some [fol. 86] three or four years, until recently, the public printing in St. Landry has been done one-half (½) the rate.

We are of the view that ninety (90%) per cent of the country papers that are existing are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse; sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

In our city, Eunice, Moosa Garage, one car dealer, is taxed a specified amount for Dodge and Plymouth advertising, on every car sold. To date this advertising has never appeared in our paper. To the contrary, a portion is given to a New Orleans daily, with his name appearing in small type at the bottom of each advertisement, which usually appears in the Sunday edition. The above force-

fully demonstrates that we are not in competition with dailies. They, however, daily compete with weekly publications, the result being that our lineage has gradually shrunk.

It is further pointed out that revenues of weekly publications, ours included, have decreased so greatly that wages and salaries have been affected, many workmen eking out a bare existence at this time. The drive by dailies to obtain all national advertising is the largest contributing factor to this existence of this condition. Consequently, a tax upon country weeklies would be unjust, in many instances, [fol. 87] prohibiting their future operation as a small-town enterprise.

In our opinion, a majority of weeklies serve only as a civic institution and are treated as same by local business, who, desiring a newspaper, assist by giving display advertising and subscriptions at intervals. Such is not the case of large dailies, who are huge commercial enterprises, clearing a profit at every turn of the presses.

As in our case, the greater portion of weeklies carry mostly personal and society news, legal matter, municipal and parochial, which not only is their chief source of revenue, but the only reason for a majority of their subscribers. Such, in addition to the above facts enumerated, should illustrate that weeklies in no way compete with dailies, and only serve as a needed community asset

(Sgd.) Howard D. Strother.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public.

[fol. 88] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF R. W. COLLIER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, R. W. Collier, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Oakdale, Parish of Allen, State of Louisiana; age, forty-two years. I have been in the newspaper business for fifteen years, all years of which were spent in country work.

I am the publisher of The Oakdale Journal, weekly newspaper printed and issued out of my establishment in the Town of Oakdale, Parish of Allen, State of Louisiana. I have been in charge of this newspaper for the last five years.

A number of years ago I was enjoying a nice patronage from what is known as "foreign advertising agencies," who advertised such products as Camel, Lucky Strike, and Chesterfield cigarettes; General Motors products, various patent medicines, etc.

Gradually I have been losing this business to the daily newspapers, until my foreign advertising revenue is practically eliminated.

I have letters on file in my office from advertisers, to the effect that they are getting a good coverage in my territory, through metropolitan newspapers, at low cost, and for that reason do not advertise in my paper. I quote a paragraph from a letter of July 24, 1934, from the Shell Petro- [fol. 89] leum Corporation, at New Orleans, addressed to me as follows: "Our publication activities are confined to the metropolitan newspapers, which give us maximum coverage of our prospects at a low cost."

For at least four years my paper has been issued at a financial loss, and has survived only by the aid of our commercial printing department, which is operated by my wife and I, who do all the newspaper work, as well, including mechanical, editorial and clerical.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by buses, or special delivery, and cover Allen parish thoroughly. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

(Sgd.) R. W. Collier.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public.

[fol. 90] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF E. L. ENGERRAN—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of Washington, above State, E. L. Engerran, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Bogalusa, Parish of Washington, State of Louisiana; age, forty-one years. I have been in the newspaper business for twelve years, all of which were spent in country work.

I am the owner and publisher of The Bogalusa News, a weekly newspaper printed and issued out of my establishment in the Town of Bogalusa, Parish of Washington, State of Louisiana. I have been in charge of this newspaper for the last ten years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the ter- [fol. 91] ritory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Times Picayune and the New Orleans Item at New Orleans, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been

able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to me, the Times Picayune and the New Orleans Item, naturally in their rights to secure business, have a circulation as great as my own within my own territory and offer a substantial circulation in all the parishes around the City of New Orleans. It got again some foreign national advertisement from my parish paper. I am not saying that this is not legitimate competition; I am merely reciting the history of my foreign advertisement in my weekly paper during the last four years. The situation is that today I have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have [fol. 92] taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisement, such as "Snow King Baking Pow-er," for instance, include in the advertisement a listing of my own Bogalusa merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is but a small amount of business secured from national advertisers by weekly newspapers.

From actual figures, our publication has been printed at a loss for the past several years, and I am sure that if all weekly publishers in the State keep a cost record on their paper that they lose money each week.

In order to remain in business, I do all of my soliciting, attend to all office matters and supervise the entire plant, as well as a number of other duties.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at New Roads the public printing was done for One [fol. 93] Dollar per year and for some three or four years the public printing in Washington Parish was done by me for One ($1.00) Dollar per year.

I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

(Sgd.) E. L. Engerran.

Sworn to and subscribed before me this, the 13th day of November, A. D., 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 94] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF THOS. M. HOLLAND—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Thos. M. Holland, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Greensburg, Parish of St. Helena, State of Louisiana; age, thirty-four years. I have been in the newspaper business for nine years, all of which were spent in country work.

I am the owner and publisher of The St. Helena Echo, a weekly newspaper printed and issued out of my establishment in the Town of Greensburg, Parish of St. Helena, State of Louisiana. I have been in charge of this newspaper for the last five years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper cir- [fol. 95] culates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, the St. Helena Echo, at Greensburg, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous

circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has, and one of them delivers at my own town by daybreak of each day; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only [fol. 96] way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper. We are really in practically different businesses.

To operate my business, I do all the work I can myself. I keep books, set type by hand and do other work in connection with the business. I attend to general collections. My sister does part of the writing, proof-reading, and attends to some collections. The only force in addition to my sister and myself which I employ consists of one brother who only works part time.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction.

I am of the view the only country papers that are getting by are those papers which maintain a job printing depart-

ment. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

(Sgd.) Thos. M. Holland.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 97] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CLIFTON E. HARPER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Clifton E. Harper, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Minden, Parish of Webster, State of Louisiana; age, thirty-two years. I have been in the newspaper business for nine years of which were spent in country newspapers in Louisiana.

I am an owner and publisher of The Minden Herald and The Minden Signal Tribune, two weekly newspapers printed and issued out of my establishment in the Town of Minden, Parish of Webster, State of Louisiana. I have been in charge of these newspapers for the last five years.

In these last years, especially the last four years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Lucky Strike, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of my country newspapers. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. They have circularized all national advertising agencies as well as employed their own repre-

sentatives to contact national advertising agencies, telling them that there is no use placing advertising in the weekly [fol. 98] papers; that they cover the field more cheaply; that they could not do this except for their large circulations. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where my country papers circulate. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

Because the State of Louisiana has built many fine paved roads, the daily papers are therefore made more able to gain further circulation because of faster and quicker distribution, all of which makes it possible for them to avoid the Federal advertising percentage tax charged when placed in the post office for distribution. They avoid the post office and in place of it substitute their carriers.

For instance, in the case of my papers, The Signal-Tribune and The Minden Herald, at Minden, Louisiana, I have lost practically all national advertising I had (which was at one time considerable) of the type and character as well as others above described through two invasions of my business. First, the Shreveport newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation in many places than my paper. They have made the above arguments, and naturally secured the business away from my papers. The Shreveport papers have a circulation in my own territory combined two-thirds as large as my own papers have; then, in addition to that, cover other portions of Louisiana, Arkansas and Texas.

Secondly, there is no competition on the part of my weekly newspapers against the large dailies, but, because of the advantages above mentioned in favor of the dailies, [fol. 99] they have become my competitor outside of their proper fields, claiming my rightful business and actually getting it because of cheaper advertising rates.

My loss of foreign advertising has gone so far as this: The daily papers in the running of foreign advertising, for instance, include in the advertisement a listing of my own Minden merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon

foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing and legal advertising. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is very little business connection between the national advertising newspaper agencies and the country newspaper.

I am of the view the only country papers, as in my case, that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

(Sgd.) Clifton E. Harper.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 100] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. A. MANGHAM

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, H. A. Mangham, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Rayville, Parish of Richland, State of Louisiana; age, fifty-two years. I have

been in the newspaper business for forty years, all of which were spent in country work.

I am the owner and publisher of The Richland Beacon-News, a weekly newspaper printed and issued out of my establishment in the Town of Rayville, Parish of Richland, State of Louisiana. I have been in charge of this newspaper for the last thirty-two years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers [fol. 101] of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Richland Beacon-News, at Rayville, Louisiana, I have lost considerable of foreign national advertisement of the type and character above described. The Monroe and Shreveport newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. The Monroe papers have a circulation in my own territory nearly as large as my own paper has; then, in addition to that, cover a substantial part of the State of Louisiana, and enjoy additionally good circulation in the States of Texas and Arkansas.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

The situation today is that there is limited business connection between the national advertising newspaper agencies and the country newspaper.

To operate my business, I do all the work I can myself. I keep books, and do other work in connection with the business, such as proof-reading, and attend to some collections. The only force in addition to me and my son which I employ consists of one linotype operator and one negro janitor.

[fol. 102] I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

A number of years ago I made a talk at a meeting of the Louisiana Press Association in which I predicted the change coming to the country weeklies. I could see, with the advent of good roads and trucks delivering daily newspapers, daily, in nearly every part of the State, that the time would soon come when the dailies would have a circulation in every weekly's territory nearly as great as that of the weekly.

When this circulation was gained I thought I could see a time when the only service left to be rendered to the public would be purely local and social news and legal printing.

That time was reached within a very short time after the forecast made, and today we have left to us only such news as interests the immediate community and to act as a medium of publication of proceedings of local boards and legal printing.

The job department supplies the additional revenue to operate the business. Under present conditions, even with a fair amount of local job printing, there is a bare livelihood for the country weekly.

(Sgd.) H. A. Mangham.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 103] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL GREMILLION—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Carl Gremillion, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Marksville, Parish of Avoyelles, State of Louisiana; age, forty-one years. I have been in the newspaper business for twenty years, thirteen years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Weekly News, a weekly newspaper printed and issued out of my establishment in the Town of Marksville, Parish of Avoyelles, State of Louisiana. I have been in charge of this newspaper for the last ten years.

That, upon the request of the Attorney General, I selected, at random, from the newspaper exchange received at my office, for the week of November 3rd, 1934, selecting fourteen newspapers so as to make a fair geographical distribution over the State, and by actual measurement made a comparison of the advertisement space in each of these papers compared to the rest of the matter in each. The list below, giving the name of the newspaper and town of publication, with percentage of advertisement space of each newspaper, is a result of my study showing that the advertisement space on the average of the fourteen papers selected at random is only thirty-four (34%) per cent, leaving [fol. 104] sixty-six (66%) per cent of other matter:

[fol. 104]

Name	Town	Percentage of Advertising
*Pointe Coupee Banner	New Roads, La	24%
The Weekly News	Marksville, La	35%
The Weekly Iberian	New Iberia, La	29%
*St. Francisville Democrat	St. Francisville, La	33%
The Natchitoches Enterprise	Natchitoches, La	46%
Rayne Tribune	Rayne, La	27%
The Mansfield Enterprise	Mansfield, La	42%
The Melville Star	Melville, La	22%
The Oakdale Journal	Oakdale, La	32%
*The Enterprise	Ponchatoula, La	26%
*St. Bernard Voice	Arabi, La	46%
The Banner Democrat	Lake Providence, La	36%
*The Colfax Chronicle	Colfax, La	24%
Abbeyville Meridional	Abbeville, La	52%
Total for 14 papers		473%

Or an average of 33.8%.

* Including year of tax sales.

The schedule of such ratio for the operation of a successful newspaper from a money-making viewpoint, as advanced by the National Editorial Association of America, is just about the reverse of the above study; that is, it should be sixty-six and two-thirds (66⅔%) per cent of advertisement space as against only thirty-three and one-third (33⅓%) per cent of other matter.

(Sgd.) Carl Gremillion.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 105] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL GREMILLION—Filed Nov. 23, 1934

STATE OF LOUISIANA,

Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Carl Gremillion, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Marksville, Parish of

Avoyelles, State of Louisiana; age, forty-one years. I have been in the newspaper business for twenty years, thirteen years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Weekly News, a weekly newspaper printed and issued out of my establishment in the Town of Marksville, Parish of Avoyelles, State of Louisiana. I have been in charge of this newspaper for the last ten years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not [fol. 106] restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Weekly News, at Marksville, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to me, the Alexandria Town Talk, naturally in its right to secure business, has a circulation as great as my own within my own territory and offers a substantial circulation in all the par-

ishes around the City of Alexandria. It got again some foreign national advertisement from my parish paper. I am not saying that this is not legitimate competition; I am merely reciting the history of my foreign advertisement in my weekly paper during the last four years. The situation is that today I have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, [fol. 107] have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisement, such as "Snow King Baking Powder," for instance, include in the advertisement a listing of my own Marksville merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including town lot, newspaper building, printing and equipment, is $18,400.00; replacement value.

An approximate statement of my yearly revenues and expenses would be as follows:

Revenues

Subscriptions	$400.00	
Job Printing	4,075.00	
Commercial advertising	225.00	
Judicial and legal advertising	2,300.00	
Total		$7,000.00

Expenses

Interest, 5% on $8,000 capital investment	$400.00	
Taxes	300.00	
Help	1,200.00	
Materials and stock	2,000.00	
Power and telephone, carriage, etc.	500.00	
Total		4,400.00
Net Profit		$2,600.00

[fol. 108] To operate my business, I do all the work I can myself. I keep books, run a linotype machine and do other work in connection with the business. I attend to general collections. My wife does part of the writing, proof-reading, and attends to some collections. The only force in addition to my wife and myself which I employ consists of one journeyman printer and one negro janitor.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at New Roads the public printing was done for One ($1.00) Dollar per year and for some three or four years the public printing in Avoyelles Parish was done by me for One ($100.00) Dollars per year.

I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news

matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

[fol. 109] By actual count, 87% of my subscribers are within the Parish of Avoyelles and only 13% outside of the Parish of Avoyelles.

(Sgd.) Carl Gremillion.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public.

[fol. 110] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF BENJAMIN J. DICHARRY—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Benjamin J. Dicharry, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Convent, Parish of St. James, State of Louisiana; age, forty-one years. I have been in the newspaper business for thirteen years, all of which were spent in country work.

I am part owner and publisher of The Interim, a weekly newspaper printed and issued out of our establishment in the Town of Convent, Parish of St. James, State of Louisiana. I have been in charge of this newspaper for the last eleven years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates.

In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

[fol. 111] For instance, in the case of my paper, The Interim, at Convent, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through the invasion of the large dailies. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

The daily papers throughout the State have adopted what is known as "routes;" they deliver by buses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

There is no competition by my paper with the daily newspapers on national advertising. The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

To operate my business, I employ only one printer. I keep books and attend to general collections. I am also the principal of the Romeville High School.

In order to provide my readers with features for which I was unable to pay directly, I added "patent inside" to my newspaper several months ago. Along with this service goes some foreign advertising for which, contrary to belief, [fol. 112] my paper gets not a red copper cent. This is not in competition with metropolitan newspapers.

(Sgd.) B. J. Dicharry.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 113] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

No. 315—Equity

AMERICAN PRESS COMPANY, INC., et al.,

versus

ALICE LEE GROSJEAN, Supervisor of Public Accounts for the State of Louisiana

Clement M. Moss; Taylor, Porter & Brooks (Ben B. Taylor, Advocate); Deutsch, Kerrigan & Burke (Eberhard P. Deutsch, Advocate); Tucker & Mason; Mouton & Davison; Thornton, Gist & Richey; Spencer, Gidiere, Phelps & Dunbar (Esmond Phelps, Advocate); Elisha Hanson, Bennett C. Clark, Advocate, Attorneys for Plaintiffs.

Gaston L. Porterie, Attorney General of the State of Louisiana, and Chas. J. Rivet, Special Asst. to the Attorney General, State of Louisiana, Counsel for Defendant.

Before Foster, Circuit Judge, and Dawkins and Borah, District Judges

Findings of Fact and Conclusions of Law—Filed March 22, 1935

BORAH, District Judge:

This is a suit in equity attacking the constitutionality of Act 23 of the General Assembly of Louisiana of 1934, and seeking to enjoin its enforcement. The nine plaintiffs who have initiated this action are Louisiana corporations, each of whom own and publish one or more newspapers in various cities of this State. The defendant is the State official who is charged with the duty of administering and enforcing the provisions of this Act and of collecting the license taxes sought to be imposed thereby. On motion of the attorneys for the plaintiffs a district court of three judges was organized and convened to hear its application for an interlocutory injunction, a preliminary restraining order having been granted after notice and hearing because of the danger of irreparable injury being caused to plaintiffs before a hearing could be had and the matter determined on said application for interlocutory injunction. After a full hearing, at which evidence was introduced in the form

of affidavits and argument had by counsel, the Court is of the opinion that defendant's plea to the jurisdiction should be dismissed, and that plaintiffs' prayer for an interlocutory injunction should be granted, and makes the following findings of fact and conclusions of law:

[fol. 114] FINDINGS OF FACT

The verified pleadings and affidavits filed herein show that the nine plaintiffs are Louisiana corporations, each of whom own and publish one or more newspapers in seven of the principal cities of the State. In the aggregate, fifteen newspapers are published by the plaintiffs and of that number all save two have a circulation of more than 20,000 copies per week within the State of Louisiana. There are no newspapers, magazines, periodicals or other publications published within the State of Louisiana having a circulation of more than 20,000 copies per week, except the thirteen newspapers owned and published by petitioners. However, there are published within the State of Louisiana four daily newspapers having a circulation of but slightly less than 20,000 copies per week, and these newspapers, with but one minor exception, compete with all of the newspapers published by petitioners both as to circulation and advertising. The same competition exists in a modified degree with reference to the 120 weekly newspapers published in the State, though none of them have a circulation of as much as 20,000 copies per week. In fine there are approximately 163 publications published in the State of Louisiana that are engaged in the business of selling and publishing advertising, and of that number the thirteen newspapers owned and published by plaintiffs are the only ones sought to be taxed by this Act.

The bill of complaint alleges and the affidavits shows that there are six principal media of advertising, and that there was spent throughout the United States during the year 1933 for such advertising approximately the following:

(1) Newspaper advertising	$453,000,000.00
(2) Magazine advertising	137,000,000.00
(3) Radio broadcast advertising	57,000,000.00
(4) Outdoor advertising	40,000,000.00
(5) Street car card advertising	11,000,000.00
(6) Motion picture advertising—less than	10,000,000.00
Total	$708,000,000.00

It further appears that in the State of Louisiana the revenue derived by these various media of advertising is in substantially the above ratio.

[fol. 115] The newspapers in question and all newspapers in general derive their revenues almost entirely from monies paid by regular subscribers or purchasers of said publications and from monies paid for the insertion of advertisements therein. Of the income thus realized, that which is derived from circulation constitutes a substantial part of the total revenue though it falls far short of meeting the cost of production and varies materially in its ratio to advertising revenue with respect to particular publications. While it is undoubtedly true that volume of circulation is a factor to be considered in fixing advertising rates, it is only one of several factors. The character of circulation, the competitive conditions in the particular territory served by the newspaper, the economic conditions prevailing in the territory and other factors are of great importance.

The statute complained of, Act 23 of the General Assembly of Louisiana of 1934, provides in Section 1(a):

"That ever- person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2%) of the gross receipts of such business."

It further provides, in substance, that all persons subject to said Act shall, on the 1st day of October, 1934, and every three months thereafter, file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for its business during the preceding three months (except that the report due October 1st, 1934, shall be for the period from August 1st to September 30, 1934), and shall accompany such report with a remittance of the amount of tax due as shown thereby. The taxes become

due on the last day of each quarter and bear interest from their due date at the rate of one per cent per month. In the event it becomes necessary to enforce payment of any [fol. 116] tax due under the Act, the Supervisor of Public Accounts is authorized to institute suit for the amount of the tax and interest, and may also include in such suit a demand for a penalty of 25% of the amount of the tax and interest as attorneys' fees, which penalty is imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered; execution of which judgment shall take place as provided by existing laws. In addition to this penalty the Act further provides, in Section 9, that—

"It shall be unlawful for any person, firm, association or corporation required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof or any managing agent or officer of any such firm, association or corporation—

1. To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

2. To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation."

The plaintiffs contend that this license tax is discriminatory and arbitrary and imposes upon plaintiffs burdens that are not imposed upon others engaged in like business in the State of Louisiana, and that because of the imposition of the unreasonable, arbitrary and discriminatory license taxes provided by said statute it is violative of the

provisions of Section 8 of Article X of the Constitution of Louisiana of 1921 which provides:

[fol. 117] "License taxes may be levied on such classes of persons, associations of persons and corporations, pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, except clerks, laborers, ministers of religion, school teachers, graduated trained nurses, those engaged in mechanical, agricultural or horticultural pursuits, or in operating sawmills. Such license taxes may be classified graduated or progressive."

It is further urged that the statute is in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it denies to the plaintiffs the equal protection of the laws.

The constitutional invalidity of the statute is further assailed on the ground that it is violative of the provisions of Section 3 of Article 1 of the Constitution of Louisiana of 1921, that "no law shall ever be passed to curtail or restrain the liberty of speech or of the press." Furthermore, that it is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law," which amendment secures against State action that freedom of the press guaranteed by the First Amendment to the Constitution of the United States.

We find it necessary to consider only the first and second grounds of attack.

Conclusions of Law

Act 23 of the Louisiana Legislature of 1934 imposes a license tax on persons engaged in the sale of advertising. The Act in terms applies only to those publications within the State having a circulation of more than 20,000 copies per week. If the weekly circulation of any publication is less than that amount, it is free from legislative restrictions. It matters not what publications it may affect today

or in the future, the express declaration of the statute is that publications having a circulation in excess of a certain amount shall be subjected to this regulations and that all others having less circulation shall be free from its provisions.

[fol. 118] The only question that need be considered is whether in the restraint which the legislature of Louisiana has attempted to impose upon these plaintiff companies, it has violated Section 8 of Article 10 of the Constitution of this State and trespassed upon those rights which by the Constitution of the United States are secured to every individual against state action.

We think that Act 23 of 1934 not only violates the Constitution of this State, but that it is also violative of the Fourteenth Amendment of the Constitution of the United States in that it does not represent a legitimate exertion of the power of classification, is purely arbitrary and denies the equal protection of the laws to those against whom it discriminates. Its constitutionality cannot be upheld on the theory that the classification adopted by the Legislature is a rational one, in that the newspapers in Louisiana having a circulation of 20,000 copies or less constitute a class of country journals, with little equipment, few employees and small assets, which use methods of operation entirely different to the metropolitan newspapers operating in the State and having a circulation of more than 20,000 copies per week. The fact that there is a difference between the urban and metropolitan press is not sufficient to meet the requirement that the classification always 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Louisville Gas Co. vs. Coleman, 277 U. S. 32; The Stewart Dry Goods Co. v. John B. Lewis et al., — U. S. — (decided March 11, 1935).

If the State, upon the same classification which it is seeking to uphold, had reversed the process and taxed the country journals and exempted the metropolitan newspapers the inequality probably would be readily conceded, but the constitutional infirmity, though more strikingly apparent, would have been the same.

While recognizing the power of the State to classify for purposes of taxation, it must also be remembered that the

equal protection of the laws is guaranteed, and that such equal protection is denied where as here the Act makes positive and direct discrimination between persons engaged in the same class of business. No one will presume to say that a newspaper whose circulation is 20,000 copies per [fol. 119] week is not doing precisely the same business as one whose circulation is slightly below that figure.

Let a decree be prepared and presented in accordance herewith.

(Signed) Rufus E. Foster, U. S. Circuit Judge.
(Signed) Ben C. Dawkins, U. S. District Judge.
(Signed) Wayne G. Borah, U. S. District Judge.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF COUNSEL THAT CASE BE SUBMITTED FOR FINAL TRIAL ON SAME PLEADINGS AND EVIDENCE AS WAS PRODUCED AT HEARING ON PRELIMINARY INJUNCTION, ETC. —Filed April 5, 1935

It is stipulated and agreed, by and between Clement M. Moss, Taylor, Porter & Brooks, Deutsch & Kerrigan & Burke, Tucker & Mason, Mouton & Davidson, Thornton, Gist & Richey, Spencer, Gidiere, Phelps & Dunbar, and Bennett C. Clark; attorneys for American Press Company, Inc., Capital City Press, Item Company, Ltd., Journal Publishing Co., Inc., Lafayette Advertiser-Gazette, Inc., McCormick & Company, Inc., News-Star-World Publishing Company, Inc., The Times-Picayune Publishing Company and Times Publishing Company, Ltd., plaintiffs herein, and Gaston L. Porterie, Attorney General, and Charles J. Rivet, Special Assistant Attorney General, attorneys for Alice Lee Grosjean, Supervisor of Public Accounts, defendant herein, that this case be and it hereby is submitted for final trial upon the same pleadings and evidence as was had and produced before the Court at the hearing upon the application for a preliminary injunction, and that the matter is herewith submitted to the Court for final decision without further argument, but with renewal and full reser-

vation of all motions, pleas and defenses urged against the issuance of the preliminary injunction.

(Signed) Gaston L. Porterie, Attorney General of Louisiana, by (Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l of La. (Signed) Clement M. Moss, (Signed) Taylor, Porter & Brooks, (Signed) Deutsch & Kerrigan & Burke, (Signed) Tucker & Mason, (Signed) Thornton, Gist & Richey, (Signed) Spencer, Gidiere, Phelps & Dunbar, (Signed) Bennet C. Clark, Attys. for Plaintiffs.

[fol. 121] IN UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

No. 315

In Equity

AMERICAN PRESS COMPANY, INC., et al.

vs.

ALICE LEE GROSJEAN, Supervisor of Public Accounts

DECREE OF PERMANENT INJUNCTION—April 8, 1935

This cause having come on for hearing on the 23rd day of November, 1934, on the application of the plaintiffs for a preliminary injunction;

And said cause having been submitted on said day for adjudication upon the pleadings and the evidence and after hearing the argument of counsel;

And the Court having on March 22nd, 1935, filed its written opinion holding that, for the reasons therein stated, plaintiffs were entitled to the issuance of a preliminary injunction as prayed for;

And the Court having, on April 4, 1935, entered a decree, pursuant to said written opinion, directing the issuance of a preliminary injunction as prayed for upon plaintiffs furnishing a joint bond in the sum of One

Thousand ($1,000.00) Dollars, and said bond having been furnished;

And there having been filed on April 5th, 1935, a stipulation signed by counsel for the various parties, agreeing that said cause should be submitted for final trial upon the same pleadings and evidence as was had and produced before the Court at the hearing on November 23rd, 1934, upon the application for a preliminary injunction, and that the matter should be submitted to the Court for final decision without further argument;

It is ordered, adjudged and decreed that the motion of defendant to dismiss the petition of plaintiffs for want of jurisdiction and of a cause of action be, and the same is, hereby dismissed.

[fol. 122] It is further ordered, adjudged and decreed that the alternative motion of defendant to strike paragraphs VIII and XI of plaintiffs' petition be, and the same is, hereby denied.

It is further ordered, adjudged and decreed that the further alternative motion of defendant to require plaintiffs to particularize and to make more certain and definite the allegations of paragraphs IV, V, VIII and XXI of their petition be, and the same is, hereby denied.

It is further ordered, adjudged and decreed that Act 23 of the Regular Session of the Legislature of Louisiana for the year 1934 be, and it is hereby, set aside as unconstitutional, null and void, and that defendant, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, her agents, attorneys, representatives and any and all persons acting under her direction, control and authority, and each of them, be, and they are hereby, permanently enjoined from attempting in any manner whatsoever to enforce any of the provisions of said Act as against plaintiffs, or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

It is further ordered, adjudged and decreed that defendant, Alice Lee Grosjean, Supervisor of Public Ac-

counts of the State of Louisiana, pay the costs of this proceeding.

This decree rendered, signed and filed on the 8th day of April, 1935.

(Signed) Rufus E. Foster, United States Circuit Judge. (Signed) Ben C. Dawkins, United States District Judge. (Signed) Wayne G. Borah, United States District Judge.

Approved as to form; all rights reserved.

(Signed) Gaston L. Porterie, Atty. Genl. of La., by Chas. J. Rivet. (Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l of La.

[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed June 20, 1935

To the Honorable Rufus E. Foster, Ben C. Dawkins and Wayne G. Borah, Judges of the United States, Convened as a Special Statutory Court under Section 266 of the Judicial Code (28 U. S. C. A. 380):

The petition of Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, through Gaston L. Porterie, Attorney General of Louisiana, and Charles J. Rivet, Special Assistant to said Attorney General and Special Counsel for the said defendant, respectfully represents:

A decree of permanent injunction was entered herein against petitioner as Supervisor of Public Accounts of the State of Louisiana.

Petitioner is aggrieved by the said decree of injunction, which, for the reasons set forth in the assignment of errors, attached hereto, is contrary to law and operates to her prejudice and injury.

From the said decree petitioner desires to appeal to the Supreme Court of the United States.

Wherefore, petitioner prays that an appeal may be allowed to her from said decree to the Supreme Court of

the United States, and that proper order as to the security for costs required of her be made.

(Signed) Gaston L. Porterie, Attorney General.
(Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana.

ORDER

Considering the foregoing petition, an appeal to the Supreme Court of the United States is hereby allowed and granted to the petitioner, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana; said petitioner to furnish bond in the sum of Five Hundred Dollars.

June 20th, 1935.

(Signed) Wayne G. Borah, Judge, U. S. District Court for the Eastern District of Louisiana.

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 20, 1935

Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, in connection with her petition for an appeal to the Supreme Court of the United States from the permanent injunction decreed against her in the above numbered and entitled cause, assigns the following errors which entitle her to a reversal of the said decree:

1. The Court erred in assuming jurisdiction of this cause where the bill, filed by nine corporations all organized and existing under the laws of Louisiana and domiciled in said State, failed to aver facts affirmatively showing that the disputed tax was of the required jurisdictional sum.

2. The Court erred in denying defendant's motion to dismiss the bill for lack of an affirmative showing of a matter in controversy of the required sum.

3. The Court erred in taking jurisdiction where the averments of the bill of complaint were evidently made for the

purpose of creating a case cognizable by the United States Court where none in fact exists.

4. The Court erred in maintaining jurisdiction after it was established by evidence that there was no matter in controversy of the required amount as to any of the plaintiffs but one.

5. The Court erred in denying the motion to dismiss for lack of equity where the bill failed to allege any facts justifying equitable interference by injunction.

6. The Court erred in issuing an injunction against an officer of a State, clothed with authority to enforce a law of said State, where no great or irreparable injury is shown by the bill, or by the evidence, to be imminent or to have been threatened.

7. The Court erred in enjoining a State officer from bringing a suit for the enforcement of a State statute.

8. The Court erred in granting an injunction the effect of which was to nullify Section 265 of the Judicial Code and the Amendment of March 4, 1913, to Section 266 of the Judicial Code.

9. The Court erred in enjoining the collection of a tax levied by the State of Louisiana where such tax is collectible only by suit.

[fol. 125] 10. The Court erred in denying defendant's motion to strike the irrelevant and scandalous matter contained in the bill of complaint.

11. The Court erred in holding that Act No. 23 of 1934 (La.) does not represent a legitimate exercise of the State's power of classification for purposes of taxation.

12. The Court erred in holding that the classification under said statute denies the equal protection of the laws to the plaintiffs in violation of the Fourteenth Amendment.

13. The Court erred in holding that the difference between the business of selling advertisement in small weekly country journals and that of selling advertisement in metropolitan newspapers is insufficient to furnish a basis for reasonable classification for purposes of license or excise taxation.

14. The Court erred in denying the State's power to grant exemptions to certain classes.

Wherefore, the decree of permanent injunction complained of should be reversed, recalled and vacated and the bill of the plaintiffs dismissed at their costs.

(Signed) Gaston L. Porterie, Attorney General;
(Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana.

[fols. 126-132] Bond on Appeal for $500.00, approved and filed June 20, 1935, omitted in printing.

[fols. 133 & 134] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 135] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed Aug. 2, 1935

Comes now the appellant in the above entitled cause and states that the points upon which she intends to rely in this Court in this case are as follows:

I

Jurisdiction

(a) Jurisdiction in this case depends upon a matter in controversy exceeding the sum or value of $3,000.00.

(b) Facts upon which the jurisdiction of Federal courts rests must be positively averred; general averments that the amount or value in controversy exceeds the required sum is a mere conclusion.

(c) A bill which fails to positively aver an amount or value in controversy exceeding the required sum must be dismissed.

(d) The value of the disputed tax alone determines the jurisdictional amount. The penalty or loss, which payment of the tax would avoid, are not included.

(e) When several plaintiffs unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount.

(f) Where diversity of citizenship does not exist there must be a federal question, not in mere form, but in substance, and not in mere assertion, but in essence and effect.

II

Impropriety of Equitable Interference

(a) A Federal Equity Court should not interfere with the enforcement of a law of one of the sovereign States merely because of its asserted illegality or unconstitutionality.

(b) A bill which fails to show that great or irreparable injury is imminent or has been threatened, and fails to allege any other facts justifying equitable interference by injunction, should be dismissed.

(c) Where State taxes are collectible only by judicial [fol. 136] proceedings, a Federal Equity Court should not enjoin the collection of the tax.

III

That Which the Law Forbids to Be Done Directly Cannot Be Done Indirectly

(a) The granting of a restraining order, followed by an interlocutory injunction, and perpetuated by a permanent injunction, forbidding an officer of a State from bringing suit in a State Court for the enforcement or execution of a statute of the State, violates Sections 265 and 266 of the Judicial Code.

(b) Where a State Tax is collectible only by suit, no Court of the United States has power to enjoin the bringing of such suit.

IV

Matters Not Justiciable, or Impertinent or Scandalous, Should, on Motion, Be stricken from the Bill

Allegations that are purely argumentative; matter that is impertinent, scandalous or libelous; allegations concerning persons not connected with the suit; and matters that are not justiciable; may be properly objected to by motion to strike, and should be stricken from the pleadings.

V

Freedom of the Press

(a) The First Amendment to the Constitution does not prohibit a State from abridging freedom of speech or of the press.

(b) Corporations are not citizens of the United States and can claim no privileges and immunities as such.

(c) The Constitution of Louisiana does not exempt the press from taxation.

VI

Classification—Denial of Equal Protection

(a) A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or form of industries. It is not bound by an iron rule of equal taxation. It may exercise its discretion in the selection of subjects, or the classification of properties, businesses, trades, callings, or occupations.

(b) Courts have no right to consider the propriety or justice of a tax, to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation.

(c) It is the duty of Courts to sustain legislative classifications if there are differences between the occupations separately classified.

[fol. 137] (d) The burden rests upon one assailing the Constitutionality of a legislative classification to show that it is unreasonable and essentially arbitrary.

(e) The Constitution of Louisiana vests unlimited power in the Legislature of the State to classify for license taxes as it may deem proper.

The appellant further represents that the whole of the record, as filed, is necessary for the consideration of the case, except the bond and citations upon this appeal, the præcipe and proof of service.

Gaston L. Porterie, Attorney General of Louisiana;
Chas. J. Rivet, Special Assistant to the Attorney General of Louisiana, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana, Appellant.

[fol. 138] PROOF OF SERVICE OF STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

Charles J. Rivet, being duly sworn, did depose and say: That as counsel for appellant in the above numbered and entitled cause he did, on August 1, 1935, serve on each of the appellees a true copy of appellant's definite statement of points on which she intends to rely and of the parts of the record which she thinks necessary for the consideration thereof.

That said service was made by enclosing said copy in envelopes addressed, respectively, to each of the appellees, and sent by registered mail (return receipt requested), deposited in the New Orleans Post Office, as follows:

American Press Company, Inc., Lake Charles, Louisiana.
Capital City Press, Baton Rouge, Louisiana.
Item Company, Ltd., New Orleans, Louisiana.
Journal Publishing Company, Inc., Shreveport, Louisiana.
Lafayette Advertiser-Gazette, Inc., Lafayette, Louisiana.
McCormick & Company, Inc., Alexandria, Louisiana.
News-Star-World Publishing Company, Inc., Monroe, Louisiana.
The Times Picayune Publishing Company, New Orleans, Louisiana.
Times Publishing Company, Ltd., Shreveport, Louisiana.

Chas. J. Rivet.

Sworn to and subscribed before me this 1st day of August, 1935.

P. H. Stern, Notary Public. (Seal.)

[fol. 139] [File endorsement omitted.]

Endorsed on cover: File No. 39,857. E. Louisiana, D. C. U. S. Term No. 303. Alice Lee Grosjean, Supervisor of Public Accounts for the State of Louisiana, Appellant, vs. American Press Company, Inc., et al. Filed July 29, 1935. Term No. 303, O. T. 1935.

(7161-C)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 303

ALICE LEE GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA,

Appellant,

vs.

AMERICAN PRESS COMPANY, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

STATEMENT AS TO JURISDICTION.

GASTON L. PORTERIE,
Attorney General of Louisiana.
CHAS. J. RIVET,
Special Assistant to the Attorney General of Louisiana.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 303

ALICE LEE GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA,

Appellant,

vs.

AMERICAN PRESS COMPANY, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

STATEMENT AS TO JURISDICTION.

The appeal herein is from a final decree of permanent injunction rendered April 8th, 1935, by a specially constituted District Court of the United States (J. C. 266, 28 U. S. C. A., 380).

Under Sections 238 and 266 of the Judicial Code (28 U. S. C. A., 345 and 380) a direct review is allowed and a direct appeal may be taken to the Supreme Court from a final decree granting a permanent injunction.

The statute herein declared unconstitutional is Act No. 23 of the Legislature of the State of Louisiana for the year 1934, to be found at page 176 of the official edition of the Acts of Louisiana for 1934.

The provisions of said Act deemed pertinent are summarized as follows:

To provide additional revenue for the State a license tax is levied and assessed upon every person, firm or corporation engaged in the business of selling advertising or advertisements, printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication having a circulation of more than twenty thousand copies per week, or displayed or exhibited, or to be displayed or exhibited by means of moving pictures in the State.

The license tax for the privilege of engaging in such business in the State is fixed at two per cent (2%) of the gross receipts of such business.

Every person, firm, association or corporation engaged in such business, or who has transacted any such business, is required to file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for such business during the period covered by the report.

The day for filing the first report is fixed as October 1st, 1934, for the period from August 1, 1934, to September 30, 1934. Thereafter a report is due on the first day of January, April, July and October for the preceding quarter of the year.

The report is to be accompanied by a remittance to the Supervisor of Public Accounts for the tax shown by said report to be due.

The Supervisor of Public Accounts is authorized to audit and revise the report, and to assess additional taxes when and as shown to be due. Notice of any additional liability

is to be given by mail to the person owing the tax. The taxpayer is given the right to contest any such assessment in the District Court of the Parish of East Baton Rouge (the domicile of the Supervisor of Public Accounts).

In cases where it is established to the satisfaction of the Supervisor of Public Accounts that a payment or payments have been made that were not due or collectible, the said Supervisor is authorized to refund any such payments out of any funds on hand, collected under the Act and not remitted to the State Treasurer.

All taxes levied by the Act are due on the day following the last day of the quarter year, as to the business done during such quarter year, and become delinquent on the thirtieth day following the last day of the quarter in which the business was transacted. Delinquent taxes bear interest at the rate of one per cent (1%) per month from their due date until paid.

Where it becomes necessary to enforce payment of any tax due under the Act, the Supervisor of Public Accounts is authorized to institute suit, in any court of competent jurisdiction, for the amount of the tax and interest, and may also include a demand for a penalty of 25% of the amount of tax and interest, as attorney's fees, which said penalty is imposed upon any taxpayer against whom it is necessary to proceed and shall be taxed as costs and included in the judgment rendered. Execution of the judgment shall take place as provided by existing laws.

It is made unlawful for any person, firm, association or corporation required to file a report or pay a tax under the Act, or any managing agent or officer of any such firm, association or corporation, to fail, neglect or refuse to file the sworn report at the time and in the manner and form prescribed, or to pay any tax due under the Act prior to its becoming delinquent; and to make any false state-

ment in the sworn report, or to make any false representations to the Supervisor of Public Accounts as to the tax levied by this Act.

A person violating any provision of the Act is to be deemed guilty of a misdemeanor, and, on conviction, shall be fined not exceeding five hundred dollars or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

As to corporations violating the Act, there shall be recovered at the suit of the district attorney, an amount not exceeding five hundred dollars for each violation.

The Act fixed the venue of prosecutions and suits thereunder.

For the purpose of enforcing the collection of the tax, the Supervisor of Public Accounts is authorized to examine, at reasonable hours, the books, records and other documents of all persons, firms, associations or corporations who have transacted any of the business described, or who are liable for a tax under the Act in order to ascertain the true amount due.

If examination of the books is refused, the Supervisor of Public Accounts is authorized to proceed by rule, in a court of competent jurisdiction, where the refusal occurred, and require the person so refusing to show cause why the Supervisor of Public Accounts should not be permitted to make the examination. In case the rule is made absolute, it is considered a judgment of the court, violation of which is to be deemed a contempt and punished according to law.

The Supervisor of Public Accounts is required to remit to the State Treasurer, not later than the 30th day after the last day of the preceding quarter, all taxes, interest and penalties, collected by him during said quarter, and the Treasurer is required to place the same to the credit of the Property Tax Relief Fund. The Supervisor is au-

thorized to withhold two thousand dollars ($2,000.00) per month of the collections for the expense of enforcing the Act.

The application for the appeal herein was presented on June 20, 1935.

(Signed) GASTON L. PORTERIE,
Attorney General;
" CHAS. J. RIVET,
Special Assistant to Attorney General,
Counsel for Alice Lee Grosjean,
Supervisor of Public Accounts of Louisiana.

(6725-C)

FILE COPY

DEC 12 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 303

ALICE LEE GROSJEAN,

Appellant,

versus

AMERICAN PRESS CO., INC., ET ALS.,

Appellees.

Appeal from Final Decree of Injunction by Three Judges Sitting in the District Court for the Eastern District of Louisiana.

BRIEF FOR APPELLANT.

GASTON L. PORTERIE,
Attorney General of Louisiana;
CHARLES J. RIVET,
Special Assistant to the Attorney General of Louisiana;
ATTORNEYS FOR APPELLANT.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O. La.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 303

ALICE LEE GROSJEAN,

Appellant,

versus

AMERICAN PRESS CO., INC., ET ALS.,

Appellees.

Appeal from Final Decree of Injunction by Three Judges Sitting in the District Court for the Eastern District of Louisiana.

BRIEF FOR APPELLANT.

Opinion Below.

The opinion of the statutory court of three judges is reported in *10 Federal Supplement, 161.*

Appellate Jurisdiction.

Paragraph 1 of Rule 12 has been complied with.

Statement of the Case.

This is an appeal from a final decree of three judges, sitting according to statute in the District Court, by which

a privilege tax law of the State of Louisiana, being *Act No. 23 of the General Assembly of 1934* (printed copy of Act in appendix), is declared unconstitutional, and by which the Supervisor of Public Accounts of the State of Louisiana is permanently enjoined from attempting, in any manner, to enforce any of the provisions of said Act as against any of the appellees, or from seeking to collect from any of them, by suit or otherwise, the tax levied by said Act. (R. 100).

The appellees are nine corporations, all creatures of the State, organized and existing under and by virtue of its laws. (R. 1).

Each of them independently own and publish one or more newspapers within the State, with a circulation of more than 20,000 copies per week therein; and they are all engaged in the business of selling or charging for advertisements to be printed or published in their newspapers. (R. 3).

The appellant, the Supervisor of Public Accounts of the State of Louisiana, is the officer designated in the statute to ascertain and collect the tax levied thereunder.

Under the statute every person, firm, association or corporation engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week in the State, is required to pay a license tax for the privilege of engaging in such business, fixed at 2% of the gross receipts thereof. *(Sec. 1).*

The statute fixes October 1, 1934, as the date for the filing of the first report for the period from August 1, 1934, to September 30, 1934, and thereafter reports are due on the first day of January, April, July and October for the preceding quarter of the year. *(Sec. 2).*

The tax is due on the day following the last day of the quarter year, as to the business done during such quarter, becomes delinquent thirty days thereafter, and bears interest at the rate of 1% per month from the due date until paid. *(Sec. 7).*

Provision is made for the refund of payments made in error, and for judicial review of any assessment made by the Supervisor. *(Secs. 4 and 5).*

The only method for enforcing payment of the tax is by suit, in a court of competent jurisdiction, for the amount of the tax and interest, and the Supervisor is authorized to demand an additional 25% on the total as attorney's fees, to be taxed as costs and included in the judgment rendered. Execution of the judgment can only take place as provided by the existing laws of the State. *(Sec. 8).*

Any violation of the Act by a person is a misdemeanor punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding six months, or both. When it is a corporation which violates the Act the district attorney may sue for and recover not exceeding $500.00 for each violation. *(Sec. 9).*

On September 20, 1934, forty days before appellant could have attempted to enforce the provisions of the Act,

appellees resorted to the expedient of presenting a joint petition to the Judge of the United States District Court for the Eastern District of Louisiana, in which they assailed the constitutionality of the statute on the following grounds:

> (1) It violates the provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, which require that license taxes must be levied on all persons engaged in the business taxed.
>
> (2) It violates the equal protection clause of the Federal Constitution.
>
> (3) It violates the provisions of Section 3 of Article I of the Louisiana Constitution prohibiting the passage of any law to curtail or restrain the liberty of speech or of the press.
>
> (4) It violates the provisions of Section 1 of the Fourteenth Amendment which provide that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or property without due process of law. (R. 6).

Jurisdiction in the District Court of the United States is asserted on the theory that the suit is one of a civil nature arising under the Constitution of the United States, brought to redress the deprivation, under color of said Act 23 of 1934, of certain rights, privileges and immunities secured to plaintiffs by the Federal Constitution; that the tax as to each of the petitioners, except three of them, would amount to more than Three Thousand Dollars PER ANNUM, exclusive of interest, costs, fines and penalties; that as to the excepted three the tax, exclusive of interest and costs, but inclusive of fines and penalties im-

posed by the Act, would exceed the sum of Three Thousand Dollars PER ANNUM; that a specific monetary value could not be placed on the business with which the enforcement of the statute would interfere, but the damage caused thereby would exceed Three Thousand Dollars as to each of the plaintiffs. (R. 10).

The District Judge granted a temporary restraining order which forbade appellant from attempting, in any manner whatsoever, to enforce the provisions of the Act as against any of the appellees, or from seeking to collect the tax imposed by said Act from any of them by **SUIT** or otherwise. (R. 12).

On hearing of the rule for a preliminary injunction, appellant moved to dismiss the bill for want of an affirmative showing of jurisdiction; also for an insufficiency of allegations constituting a valid cause of action in equity. In the alternative, appellant moved that certain argumentative, impertinent, and scandalous and libelous statements in the bill be stricken therefrom. In the further alternative, that the appellees be required to make a further and better statement of the nature of their complaint. Appellant denied that appellees, or any of them, were in danger of suffering irreparable or other loss or injury, denied the asserted unconstitutionality of the statute; and specially pleaded that she, as an officer of the State of Louisiana, and the State of Louisiana, by the restraining order already issued and by a preliminary injunction, if one issued, forbidding the bringing of a suit to enforce the statute, had been and would be deprived of the rights granted by the Act of Congress of March 4, 1913, amend-

ing Section 266 of the Judicial Code; and that as the bill presented a controversy *in personam* no injunction should issue to preclude her from bringing an action *in personam* against appellees in any court of concurrent jurisdiction. (R. 57).

After hearing, the three Judges denied all of appellant's motions; overruled all her pleas; declared the statute unconstitutional; and temporarily enjoined her to the same extent as had been done under the restraining order. (R. 93).

In its findings and conclusions on the interlocutory application, which were adopted as the findings and conclusions for the final decree, the court made no reference whatsoever to the pleadings and the affidavits filed on behalf of appellant, but proceeded with its findings of facts and conclusions of law practically as though no defenses or proof whatsoever had been urged and presented by her.

All of the facts favorable to the appellees taken from their pleadings and affidavits are recited in the court's findings of fact.

On the important question of its jurisdiction the court satisfied itself with the bare declaration: "The court is of the opinion that defendant's plea to the jurisdiction should be dismissed". (R. 94).

Appellant established the following facts which are not referred to in the court's findings:

The country journal with circulation limited both as to area and number has been practically eliminated as a source of commercial advertising. (R. 62-92).

Such journals depend upon job printing and legal printing for their very existence. (R. 69-90).

Metropolitan dailies cover the entire state and have circulation even beyond its borders, while the small country journal limits its activities to one parish or to a few adjoining parishes. (R. 70-92).

The country weekly is regarded as a civic institution, whereas the large dailies are huge commercial enterprises. (R. 74).

According to the National Editorial Association of America the ratio of advertisement to other matter in a successful newspaper should be 66⅔ advertisement to 33⅓ other matter. The ratio is reversed in small country journals. (R. 87).

By stipulation, the matter was submitted for final decision on the same pleadings and evidence as upon the application for the interlocutory injunction, without further argument, but with renewal and full reservation of all of appellant's motions, pleas and defenses. (R. 99).

The three Judges found it necessary to consider only the grounds of unconstitutionality predicated on classification. Though in its conclusions of law the court recognized a difference between the urban and metropolitan press, it deemed that difference insufficient to meet the requirements of the Federal and State constitutions. (R. 98).

Upon what basis of fact or law the court took jurisdiction, and where it found the necessity for equitable interference does not appear.

A final decree was entered by the three Judges denying, for the reasons given on the interlocutory application, the motions to dismiss for lack of jurisdiction and of a cause of action in equity; dismissing the motions to strike and for particulars; holding the statute unconstitutional, and permanently enjoining appellant, as Supervisor of Public Accounts of the State of Louisiana, her agents, attorneys, representatives and other persons acting under her direction, from attempting in any manner whatsoever to enforce any of the provisions of the Act as against any of the appellees, or from seeking to collect from any of them, by **SUIT** or otherwise, the taxes sought to be imposed by the said Act, or from requiring any of them to make reports required by said Act, or from attempting under the authority of said Act to examine any of their books, records and other documents. (R. 100).

Specification of the Assigned Errors Intended to Be Urged.

Appellant intends to urge all of the fourteen errors assigned. (R. 103).

Specifically appellant will urge:

1. That the District Judge should not have assumed jurisdiction of this cause when on the face of the bill it appeared that the complainants were not citizens of the United States, that there was no diversity of citizenship, and there was no positive averment of fact showing that the tax complained of amounted to Three Thousand Dollars as to each of them.

2. That the court of three Judges should likewise have declined jurisdiction, and maintained the motion to dismiss, for lack of sufficient aver-

ments in the bill to overcome the presumption of lack of jurisdiction.

3. That neither the District Judge nor the statutory court should have taken jurisdiction where the averments of the bill were evidently made for the purpose of creating a case cognizable by the United States Court when no jurisdiction in fact exists.

4. That when under complainants' own evidence it was established that the tax in dispute was less than Three Thousand Dollars as to all of them but one, the plea to the jurisdiction should have been maintained.

5. That the motion to dismiss for lack of equity should have been granted where the bill, seeking to enjoin the collection of a tax, on its face failed to aver facts bringing the case within some clear ground of equity jurisdiction.

6. That an injunction should not have issued against an officer of a state to prevent the collection of a tax where neither the facts averred in the bill, nor those adduced by evidence, showed any great and irreparable injury to be imminent or to have been threatened, or to be even possible.

7. That where the only action which can be taken by a state officer in the enforcement of a statute is through judicial proceedings, no case is presented for relief by injunction.

8. That the District Judge in granting the restraining order prior to the time when suit could have been brought by the defendant, and the statutory court in granting the interlocutory injunction and in making said injunction permanent, each of which prohibited the bringing of suit by defendant in a court of competent jurisdiction of the state, deprived defendant of the benefits of Sections 265 and 266 of the Judicial Code.

9. That where a tax is collectible only by suit and judgment, which can be executed only as are other judgments rendered by the state court, there is no occasion for interference by a federal equity court.

10. That under Equity Rules 21 and 25 allegations that are purely argumentative; matter that is impertinent, scandalous or libelous; and allegations concerning persons not connected with the suit, and matters that are not justiciable, may be properly objected to by motion to strike, and should be stricken from the pleadings, unless the court finds that the allegations are not as asserted.

11. That Act No. 23 of the Louisiana Legislature of 1934 represents a legitimate and constitutional exercise of the power of classification for purposes of license taxation.

12. That the classification is founded upon a reasonable distinction, is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy; and in exercising such power of classification the state does not deny equal protection of the laws.

13. That there is a marked and recognized difference between the business of selling advertisement in small country journals and that of selling advertisement in metropolitan newspapers; that the character of the businesses, the sources of revenue, and the fields of operation are entirely different, and these factors furnish a sufficient basis for classification for purposes of license taxation.

14. That a state does not deny the equal protection of the laws by granting exemption to certain classes or by adjusting its revenue laws and taxing system in such a way as to favor certain industries or form of industry.

Summary of Argument.

Part I. The jurisdiction of the federal courts under paragraph 14, Sec. 24, Judicial Code, can be exercised only when the suit is brought by citizens of the United States.

Where there is no diversity of citizenship, a federal court has no jurisdiction unless the suit arises under the Constitution or laws of the United States and there is a matter in controversy exceeding the value of $3,000.00.

Jurisdictional facts must be positively averred.

Where the dispute concerns the validity of a tax, the value of the tax alone establishes the jurisdictional amount.

The tax must equal the jurisdictional sum as to each complainant.

The facts averred must show a substantial federal question involved.

Part II. No federal equity court should interfere by injunction to prevent the collection of a tax levied by one of the sovereign states, unless it be to avoid great and irreparable injury, imminent or threatened. Where the tax is collectible only by suit, there is no possibility of great and irreparable injury.

Part III. Where the action in the federal court is one *in personam*, that court has no authority to enjoin the bringing of a personal action in a state court of concurrent jurisdiction.

A federal court of equity is without power to do indirectly that which it is prohibited by statute from doing directly.

Part IV. It is proper to proceed by motion to strike to have impertinent, irrelevant and libelous and non-justiciable matter eliminated from the pleadings.

Part V. The First Amendment operates against the Congress, not against the States. The Fourteenth Amendment did not extend to the States the restrictions imposed by the first ten amendments upon the federal government.

Corporations do not enjoy the privileges and immunities of citizens of the United States.

The liberty guaranteed by the Fourteenth Amendment is the liberty of natural, not of artificial persons.

A tax on the business of selling or charging for advertisements to be published in newspapers in no way affects liberty of speech or of the press as constitutionally understood.

The liberty of speech or of the press provisions of the Louisiana Constitution do not afford an exemption from taxation.

Part VI. The equal protection clause of the Federal Constitution does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification of businesses, trades, callings or occupations.

Where the difference between two allied businesses is so marked as to be recognized in the industry itself, it cannot be said that a state statute imposing a tax on one and not on the other, denies the equal protection of the laws.

Mere competition between two businesses is not enough to show that they must be burdened alike.

Part VII. The Constitution of Louisiana does not prohibit but, on the contrary, authorizes the Legislature to make such classifications as it may deem proper for purposes of occupational license taxes.

ARGUMENT.

Part I.

LACK OF JURISDICTION.

Subdivision (a).

JURISDICTION IN THIS MATTER DEPENDS UPON A MATTER IN CONTROVERSY EXCEEDING A SUM OR VALUE OF THREE THOUSAND DOLLARS.

This suit was brought in a district court of the United States to enjoin the collection of a tax levied under an act of the Legislature of Louisiana asserted to be unconstitutional under both the State and Federal Constitutions.

Jurisdiction is claimed on the ground that the suit is one of a civil nature arising under the Constitution of the United States, brought to redress the deprivation, under

color of a statute of the State, of certain rights, privileges and immunities secured to petitioners by the Constitution of the United States. (R. 10).

It is alleged in the bill that the tax imposed by the statute as to each of the petitioners, except three of them, would amount to more than Three Thousand Dollars PER ANNUM, exclusive of interest, costs, fines and penalties; that as to each of the excepted three the tax imposed by the statute, exclusive of interest and costs but inclusive of fines and penalties imposed by said act, would exceed the sum of Three Thousand Dollars PER ANNUM; that it is impossible to place a specific monetary value on the business which will be interfered with and on the damage which will be caused through the enforcement of the act, but that such value and damage will far exceed Three Thousand Dollars as to each of the plaintiffs. (R. 10).

Under this statement it was argued that the jurisdiction of the district court is under both paragraphs 1 and 14 of section 24 of the Judicial Code *(28 U. S. C. A., section 41, subdivisions 1 and 14,* see appendix).

It is obvious that the bill does not present a case falling within the fourteenth paragraph of *section 24 of the Judicial Code.*

First of all the complainants are not citizens of the United States. The assertion of privileges and immunities under the Constitution is injected in an attempt to make jurisdiction where none in fact exists.

> "A corporation does not possess the privileges and immunities of a citizen of the United States

within the meaning of the Constitution." *Liberty Warehouse Co. v. Burley Tobacco Growers, etc., 276 U. S. 71, 48 S. Ct. 291,* and cases therein cited.

"It is well settled that a corporation cannot claim the protection of the clause of the Fourteenth Amendment which secures the privileges and immunities of citizens of the United States against abridgment or impairment by the law of a state." *Selovar, Bates & Co. v. Walsh, 226 U. S. 112, 33 S. Ct. 69.*

"The liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the liberty of natural, not of artificial persons." *Western Turf Assn. v. Greenberg, 204 U. S. 359, 27 S. Ct. 384.*

Secondly, *paragraph 14, Sec. 24 J. C.*, has reference to suits at law or in equity authorized by Revised Statute Sec. 1979 *(8 U. S. C. A., Sec. 43)*, (See Appendix), and does not apply to cases involving property rights. The situation is not changed because it is wrongly asserted that the Fourteenth Amendment secures against state action that freedom of the press guaranteed by the First Amendment of the Constitution.

The language in the *Virginia Coupon* Cases, *Carter v. Greenhow, 114 U. S. 317, 5 S. Ct. 928,* and *Pleasants v. Greenhow, 114 U. S. 323, 5 S. Ct. 931,* are easily adaptable to the circumstances of the instant case, and demonstrate that jurisdiction does not exist under *paragraph 14 of section 24 of the Judicial Code.*

The complaint in those cases was that the State had passed an act impairing the obligation of contracts and

that the defendant under authority of such unconstitutional statute had refused to receive from the plaintiffs the coupons tendered in payment of their taxes and thereafter proceeded to levy upon and take their property for the purpose of collecting such taxes in money. The Court concluded that the complaint was not within the terms of *Section 1979 of the Revised Statutes* and pointed out that though the State was forbidden by the Constitution to pass a law impairing the obligations of contracts, if any such is nevertheless passed, it would be unconstitutional, null and void; that the mode in which Congress has legislated in aid of the rights secured by the pertinent clause of the Constitution

> "is, as is pointed out with clearness and fullness in the opinion of the Court in the Civil Rights Cases, - - - by providing for a review on writ of error to the judgments of the state courts, in cases where they have failed properly to give it effect, and by conferring jurisdiction upon the circuit courts - - - of all cases arising under the Constitution and laws of the United States, where the sum or value in dispute exceeds $500. Congress has provided no other remedy for the enforcement of this right."

See also the excellent discussion of this question by Learned Hand, District Judge, in *Marcus Brown Holding Co. v. Pollak, 272 Fed. 137*, in which he reviews the cases, distinguishes *Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7*, and concludes as follows:

> "These cases, like the Civil Rights Cases, (109 U. S. 3-12, 3 S. Ct. 18) hold that the general right of property does not have its origin in the Constitution and that the Fourteenth Amendment is

> not constitutive of them. It is in this sense that we understand Subdivision 14 to use the word 'secure'. Were it not so, all matters arising 'under the Constitution,' as prescribed in Subdivision 1, would be justiciable under Subdivision 14, and the amount in controversy would never be a condition upon our jurisdiction, when a constitutional point was raised. This is certainly not the law."

If the complainants are deprived of property without due process, or are denied equal protection of the laws by the statute attacked, there is jurisdiction in the United States Courts only when the matter in controversy is within the jurisdictional amount.

Paraphrasing the language of Chief Justice Fuller in the case of *Holt v. Indiana Manufacturing Company, 176 U. S. 68, 20 S. Ct. 272:*

> If state legislation deprives of property without due process of law, or denies the equal protection of the laws, as asserted by counsel in respect of the statutes of Louisiana, remedies are found in the first paragraph of Section 24 of the Judicial Code, giving to the district courts jurisdiction of all cases arising under the Constitution and Laws of the United States; and in Section 237 of the Judicial Code, 28 U. S. C. A. 344, which gives a review on writ of error to the judgments of the State Courts whenever they sustain the validity of a State Statute or of an authority exercised under a State, alleged to be repugnant to the Constitution or laws of the United States.
>
> Treating this bill as setting up a case arising under the Constitution of the United States because of denial of equal protection, it is essential that there be a matter in controversy exceeding $3000.

Subdivision (b).

FACTS UPON WHICH JURISDICTION RESTS MUST BE POSITIVELY AVERRED, AND A BILL LACKING SUCH POSITIVE AVERMENTS MUST BE DISMISSED.

That a cause is presumed to be without the jurisdiction of a district court of the United States; that the facts upon which such jurisdiction rests must appear distinctly and positively; and that jurisdiction may not be inferred argumentatively, are, as said by Justice Harlan in *Thomas v. Board of Trustees of the Ohio State University, 195 U. S. 207, 25 S. Ct. 24*, propositions so firmly established that further discussion of them would be both useless and inappropriate.

The bill (paragraph XXI, R. 10) avers that the tax imposed by the Act under attack, as to each of the petitioners, except three, would amount to more than Three Thousand Dollars PER ANNUM, exclusive of interest, costs, fines and penalties. That as to each of the three the tax, exclusive of interest and costs, but inclusive of fines and penalties, would exceed the sum of Three Thousand Dollars PER ANNUM.

The statute does not levy an ANNUAL tax, but a QUARTERLY tax. Each quarter is separate and distinct. The only tax which, under any theory, could be said to be involved when the bill was filed is that which was to become due on October 1, 1934, for the short period from August 1, 1934, to September 30, 1934. There is no averment in the bill that the tax for that period would amount to more than Three Thousand Dollars, as to any of the petitioners.

The averment is that the tax would amount to more than Three Thousand Dollars over a period of a YEAR.

Future taxes which may be affected by the decision cannot be included in determining the value of the matter in dispute. *Holt v. Indiana Mfg. Co., 176 U. S. 68, 20 S. Ct. 272,* and cases therein cited.

See also:

Healy v. Ratta, 292 U. S. 263, 54 S. Ct. 700.

The bill admits that as to three of the petitioners the tax would NOT amount to more than Three Thousand Dollars, even in a YEAR, unless fines and penalties imposed by the Act were added to the tax (R. 10), which cannot be done.

The bill further avers (R. 10) that it is impossible to place a specific monetary value on the business with which the enforcement of the statute would interfere, but that as to each the damage caused through enforcement of the Act will far exceed the sum of Three Thousand Dollars.

Under the authority of *Healy v. Ratta (supra)*, this last general averment as to damage to the business must be ignored.

The bill, therefore, not only fails to positively aver facts showing an amount or value in controversy in excess of Three Thousand Dollars, but, on the contrary, NEGATIVES the existence of such facts.

There are no positive averments in the bill to overcome the presumption of lack of jurisdiction. The district

court was without authority or power on the face of the bill to issue the restraining order and the interlocutory injunction which interfered with appellant's enforcement of the statute and prohibited her from entering suit at the proper time, in the state court.

Subdivision (c).

THE VALUE OF THE DISPUTED TAX ALONE ESTABLISHES THE JURISDICTIONAL AMOUNT.

At the time of the filing of the bill no report or tax whatsoever was due. The first report and tax was not to become due until October 1, 1934, and interest on the first tax would not begin to run until the thirtieth day thereafter. By awaiting the due date of the first tax appellees could have avoided all interest and all damages by merely paying the tax.

> "The tax, payment of which is demanded or resisted, is the matter in controversy, since payment of it would avoid the penalty and end the dispute. See Ross v. Prentiss, 3 How. 771, 772, 11 L. Ed. 824. Whether and in what manner the penalty for nonpayment may be enforced in the event the tax is valid are but collateral and incidental to the determination whether payment may be exacted. Only when the suit is brought to restrain imposition of a penalty already accrued by reason of failure to comply with the statute or order assailed can the penalty be included as any part of the matter in controversy. See McNeil v. Southern Ry. Co., 202 U. S. 343, 26 S. Ct. 722, 50 L. Ed. 1142; Kansas City Southern Ry. Co. v. Ogden Levee Dist. (C. C. A.) 15 F. (2d) 637; compare Barry v. Edmunds, 116 U. S. 550, 6 S. Ct. 501, 29 L. Ed. 729." *Healy v. Ratta, 292 U. S. 263, 54 S. Ct. 700.*

Subdivision (d).

THE TAX IN CONTROVERSY MUST EQUAL THE JURISDICTIONAL SUM AS TO EACH COMPLAINANT.

As we have said, it is admitted in the bill that the tax, without the unaccrued penalties, would amount to less than Three Thousand Dollars PER ANNUM as to three of the complainants. The bill fails to show that the tax which was to become due October 1, 1934, would amount to more than Three Thousand Dollars as to ANY of the complainants. The averments of the bill, on the contrary, negative such fact.

It is well settled that in cases such as this the amount in controversy must equal the jurisdictional sum as to each complainant. *Scott, et al., v. Frazier, et al., 253 U. S. 243, 40 S. Ct. 503*, and cases therein cited. See also *Pinel v. Pinel, 240 U. S. 594, 36 S. Ct. 416; Cole v. Norborne Land Drainage District, 270 U. S. 45, 46 S. Ct. 196.*

See also *Di Giovanni v. Camden Fire Ins. Assn., 56 S. Ct. 1.*

Considering that on the face of the bill presented to the district judge it clearly appeared that the petitioners were not citizens of the United States, and that there was no positive averment of fact showing that the tax complained of amounted to Three Thousand Dollars as to any one of them, but, on the contrary, a positive admission that as to three of them the tax did not amount to Three Thousand Dollars, he should have declined to take jurisdiction of the case and should have entered no order whatsoever with respect thereto.

The three judges should also have declined jurisdiction. Appellant filed a motion to dismiss which pointed out that the bill lacked the necessary averments to show jurisdiction. Though this serious question of jurisdiction was called squarely to the attention of the statutory court, it gave no consideration to it in its written reasons other than to say: "The court is of the opinion that defendant's plea to the jurisdiction should be dismissed." (R. 94).

Following is a table made from the affidavits filed by complainants showing the amount of tax, not yet accrued at the time of the filing of the bill, to become due by each of them on October 1st, 1934, and payment of which would have avoided all penalties and ended all dispute. *(Healy v. Ratta).*

American Press Company, Inc.	$ 285.82
Capital City Press	735.06
Item Company, Ltd.	2,901.45
Journal Publishing Company, Inc.	712.74
Lafayette Advertiser-Gazette, Inc.	125.23
McCormick & Company, Inc.	313.05
News-Star-World Publishing Corporation	522.57
The Times-Picayune Publishing Company	5,219.97
Times Publishing Company, Ltd.	1,183.67

The evidence adduced by complainants establishes positively that the tax becoming due October 1, 1934, and payment of which would have avoided all penalties and ended dispute, amounted to less than Three Thousand Dollars as to all of them, but one. As to eight of these complainants, the Federal Courts are without a vestige of jurisdiction. Notwithstanding this apparently clear lack of jurisdiction the three judges enjoined defendant from attempting to collect the tax even by suit, instead of dis-

missing the bill for want of jurisdiction. As to the sole complainant whose tax would amount to more than $3000, there was no basis shown for the exercise of federal equity powers, as we shall show.

Subdivision (e).

WHERE DIVERSITY OF CITIZENSHIP DOES NOT EXIST, THERE MUST BE A FEDERAL QUESTION NOT IN MERE FORM, BUT IN SUBSTANCE, AND NOT IN MERE ASSERTION, BUT IN ESSENCE AND EFFECT.

> "To give jurisdiction to the federal courts where diversity of citizenship does not exist, there must be a federal question, not in mere form, but in substance, and not in mere assertion, but in essence and effect." *Cuyahoga River Power Co. v. Northern Ohio T. & L. Co., 252 U. S. 388, 40 S. Ct. 404.*

It is settled that not every mere allegation of a federal question will suffice to give jurisdiction. A real and not a mere formal federal question is essential to jurisdiction. *N. O. Waterworks Co. v. La., 185 U. S. 336, 22 S. Ct. 691.*

The averments of the bill present no real and substantial federal question.

Denial of equal protection of the laws is asserted because the State has selected the subjects or established a class for the purposes of the tax. The right of the State to do this cannot be questioned. See *State Board of Tax Com-*

missioners of Indiana v. Jackson, 283 U. S. 527, 51 S. Ct. 540, and cases therein cited and reviewed. And

> "Of still less merit is the suggestion that the statute abridges the rights and privileges of citizens; for a corporation cannot be deemed a citizen within the meaning of the clause of the Constitution of the United States, which protects the privileges and immunities of citizens of the United States against being abridged or impaired by the law of a state." *Western Turf Association v. Greenberg, 204 U. S. 359, 27 S. Ct. 384.*
>
> "The same observation may be made as to the contention that the statute deprives the defendant (plaintiffs) of its (their) liberty without due process of law; for the liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the liberty of natural, not artificial persons." *(Id.).*

What substance can there be to the suggestion that appellees are deprived of property without due process of law when the only action available to appellant is the institution of suit for a judgment, the execution of which "shall take place as provided by existing laws". *(Sec. 8 of the Act, appendix).* Whether suit is filed for the tax under *Section 8*, or whether the District Attorney sued to recover the penalty under *Section 9*, complainants would have full opportunity to present all defenses available to them, and to have the final judgment of the state court reviewed by the Supreme Court of the United States. Compare *N. O. Waterworks Co. v. State of La., supra.*

Equally devoid of merit is the suggestion that the statute abridges freedom of the press, as guaranteed by the

Federal Constitution. The first amendment restricts the powers of Congress, not those of the states.

It is obvious, however, that the statute neither curtails the right to freely utter and publish whatever the citizen may please, nor imposes any penalty as a result of such publication. Liberty of speech and of the press does not extend beyond this. The statute in fact deals solely with a business which has grown to Gargantuan proportions in recent years, the business of selling advertisements, and imposes upon that business a small contribution for the support of government. The business of uttering and publishing views and opinions, and of collecting and reporting occurrences and events of the day is in no wise affected. THE TAX IS LIMITED TO 2% OF THE GROSS RECEIPTS DERIVED FROM THE BUSINESS OF SELLING OR CHARGING FOR ADVERTISEMENTS.

Even if the tax extended to the publishing business, it would not be objectionable as impairing the liberty of speech and of the press.

> "Newspaper publishers may, without violating the constitutional provision in favor of the freedom of the press, be required to pay a license tax in respect to their business." *Cooley on Taxation, Vol. 4, Fourth Ed., Section 1707.*

We will discuss this question at greater length later.

The bill on its face presents no substantial federal question.

> " - - - affidavits filed in support of the application for a temporary injunction may not be considered in determining whether the complaint states facts sufficient to constitute ground for relief. Leo

v. Union Pac. Ry. Co. (C. C.) 17 F. 273; United States v. Marine Engineer's Ben. Assn. No. 38 (D. C.) 277 F. 830, 834; McGregor v. Great Northern R. Co., 42 N. D. 269, 280, 172 N. W. 841, 4 A. L. R. 1635. - - - The complaint contains much by way of argument, assertions as to questions of law together with inferences and conclusions of the pleader as to matters of fact. These are not deemed to be admitted by motion to dismiss. Equitable Life Assurance Society v. Brown, 213 U. S. 25, 43, 29 S. Ct. 404, 53 L. Ed. 682; Southern Ry. Co. v. King, 217 U. S. 524, 536, 30 S. Ct. 594, 54 L. Ed. 868; Pierce Oil Corp. v. Hope, 248 U. S. 498, 500, 39 S. Ct. 172, 63 L. Ed. 381. The state laws are presumed valid. - - - The burden is on the plaintiff by candid and direct allegations to set forth in its complaint facts sufficient plainly to show the asserted invalidity. Aetna Insurance Co. v. Hyde, 275 U. S. 440, 447, 48 S. Ct. 174, 72 L. Ed. 357, and cases there cited; N. O. Public Service v. New Orleans, 281 U. S. 682, 686, 50 S. Ct. 449, 74 L. Ed. 1115; Beaumont, S. L. & W. Ry. v. United States, 282 U. S. 74, 88, 51 S. Ct. 1, 75 L. Ed. 221." *Missouri Pac. R. Co. v. Norwood, 283 U. S. 249, 51 S. Ct. 458, 461.*

We respectfully submit that the serious question of jurisdiction presented in this case was not given proper consideration by the district judge and by the statutory court; and that there should be judgment by this court reversing the decree appealed from for lack of jurisdiction.

Part II.

IMPROPRIETY OF EQUITABLE INTERFERENCE.

Appellant objected *in limine* to the equity jurisdiction of the district court by moving to dismiss for lack of facts in the bill to constitute a valid cause of action in equity. The motion was denied without comment.

The statute assailed as unconstitutional furnishes no means of action to the Supervisor of Public Accounts, charged with its enforcement, other than the institution of a suit in a court of competent jurisdiction, where every objection of law and fact would be open to the defendant in such suit.

The statute does not provide for a lien against property, nor for summary seizure thereof, nor for interference with the business by injunction, or otherwise; and no execution is permitted except such as would result from any other final judgment of the State Court.

By frequent repetition, this Court has consecrated the doctrine that no federal equity court will interfere with the enforcement of a law of one of the Sovereign States merely because of its asserted illegality or unconstitutionality. This is particularly true when an injunction is sought to prevent the collection of a tax. It is only to avoid GREAT and IRREPARABLE injury, imminent or threatened, that a federal court of equity will interfere.

In the *Massachusetts Daylight Saving Acts* case you characterized the foregoing rule as important, and said:

> "We desire to emphasize that no injunction ought to issue against officers of a State clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury.
>
> - - -
>
> "Courts sometimes say that there is no jurisdiction in equity when they mean only that equity ought not to give the relief asked. In a strict sense the Court in this case had jurisdiction. It had power to grant an injunction, and if it had granted

> one its decree, although wrong, would not have been void. But upon the merits we think it too plain to need argument that to grant an injunction upon the allegations of this bill would be to fly in the face of the rule which, as we have said, we think should be very strictly observed." *Massachusetts State Grange v. Benton, 272 U. S. 525, 47 S. Ct. 189.*

In the instant case the allegations of the bill are insufficient to show jurisdiction in equity. To grant an injunction thereunder is indeed to fly in the face of the rule.

No GREAT or IRREPARABLE injury is shown by the bill to be imminent or to have been threatened or to be POSSIBLE. No GREAT or IRREPARABLE injury can be asserted when the only possible complaint is that a law suit in the State Court may result unfavorably to the complainants.

In *Northport P. & L. Co. v. Hartley, 283 U. S. 568, 51 S. Ct. 581,* a bill in equity was brought to enjoin State Officers from bringing or causing to be brought a suit for enforcing a statute of the State of Washington on allegations that the same violated the commerce and contract clauses of the Federal Constitution, the Fourteenth Amendment, and the Treaty between the United States and Great Britain. The bill was dismissed by a district court of three Judges. In affirming the dismissal this Court said:

> "It is an odd ground for an injunction against a suit that the suit may turn out against the party sued. If the action is based upon an unconstitutional law and if the trial court upholds it, still THE APPELLANT CAN PROTECT ITS RIGHTS AS FULLY IN THE STATE COURTS AS ELSEWHERE. As it is put by Mr. Justice Moody speak-

ing for an unanimous Court, 'it is safe to say that no case can be found where this court has deliberately approved the issuance of an injunction against the enforcement of an ordinance resting on state authority, merely because it was illegal or unconstitutional, unless further circumstances were shown which brought the case within some clear ground of equity jurisdiction.' Boise Artesian Hot & Cold Water Co. v. Boise City, 213 U. S. 276, 283, 29 S. Ct. 426, 429, 53 L. Ed. 796. Cavanaugh v. Looney, 248 U. S. 453, 456, 39 S. Ct. 142, 63 L. Ed. 354."

In *Keokuk & Hamilton Bridge Co. v. Salm, 258 U. S. 122, 42 S. Ct. 207*, affirming a decree of the District Court dismissing a bill of complaint to enjoin the collection of a tax, this Court said:

"The Illinois statutes relating to the assessment and taxation of real estate - - - **under which taxes levied against a bridge company are collected by judicial proceedings in which the taxpayer can present any defense, gives ample protection to the taxpayer, so that it is not entitled to injunction to restrain the collection of the tax, either on the ground of preventing a sale for illegal tax creating a cloud upon title, or of preventing a multiplicity of suits, or other irreparable injury.**"

In *St. Louis, San Francisco Ry. Co. v. Middlekamp, 256 U. S. 226, 41 S. Ct. 489*, it was held that a railroad company could not restrain the collection of a franchise tax on the ground that the laws of Missouri imposing the tax made no provision for a hearing, where the tax was collectible only by suit in which it was to be supposed any question of law apparent on the face of the record would be open. The bill to restrain the collection of the tax was

denied by the lower court and the denial was affirmed here.

In the recent case of *Matthews v. Rodgers, 284 U. S. 521, 52 S. Ct. 217, 219*, this Court said:

> "Section 16 of the Judiciary Act of 1789, 1 Stat. 82, perpetuated without material change as Rev. Stat. § 723, Jud. Code § 267 (28 U. S. C. § 384, 28 USCA § 384), declares that suits in equity shall not be sustained in the courts of the United States 'in any case where a plain, adequate, and complete remedy may be had at law.' The effect of this section, which was but declaratory of the rule in equity, established long before its adoption, is to emphasize the rule and to forbid in terms recourse to the extraordinary remedies of equity where the right asserted may be fully protected at law. See Deweese v. Reinhard, 165 U. S. 386, 389, 17 S. Ct. 340, 41 L. Ed. 757; New York Guaranty Co. v. Memphis Water Co., 107 U. S. 205, 214, 2 S. Ct. 279, 27 L. Ed. 484.
>
> "The reason for this guiding principle is of peculiar force in cases where the suit, like the present one, is brought to enjoin the collection of a state tax in courts of a different, though paramount sovereignty. The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party

> **is left to that remedy in the State Courts, from which the cause may be brought to this Court for review if any Federal question be involved,** Jud. Code § 237 (28 USCA § 344), or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present. See Boise Artesian Hot & Cold Water Co. v. Boise City, 213 U. S. 276, 29 S. Ct. 426, 53 L. Ed. 796; Shelton v. Platt, 139 U. S. 591, 11 S. Ct. 646, 35 L. Ed. 273; Dows v. Chicago, 11 Wall. 108, 110, 112, 20 L. Ed. 65."

Section 5 of the Act authorizes payments to be refunded that may have been made when not due and collectible, out of any funds on hand collected under the Act and not remitted to the State Treasurer according to law. *Section 11* of the Act requires the Supervisor to make remittance to the State Treasurer not later than the 30th day after the last day of the preceding quarter of all taxes, interest and penalties collected during said quarter.

The Supreme Court of the State has been deprived of an opportunity to construe these two sections by the restraining order and the injunctions issued herein. The sections may be fairly construed to mean that where a tax is paid under protest no remittance is to be made to the State Treasurer until judicial determination of liability.

In any event the only means available for enforcing any of the provisions of the act is by means of judicial proceedings where all available defenses could be presented and all federal questions disposed of in due course of law.

The pretense that equitable relief is necessary in order to avoid a multiplicity of suits, finds no support either in fact or under settled jurisprudence.

To give relief in equity against multiplicity of suits complainant must have prevailed in at least one law action. *N. Y. Life Ins. Co. v. Marshall, 23 F. (2d) 225 (C. C. A. 5th C.).* Certiorari denied *277 U. S. 587, 48 S. Ct. 434.*

Even if a suit had been filed equity would not interfere except to prevent continued and vexatious litigation between the same parties. See *Boise Artesian Hot & Cold Water Co. v. Boise City, 213 U. S. 276, 29 S. Ct. 426.*

Had appellant not been prevented from filing suit by a restraining order, and subsequently by injunction, the issue herein would have been settled by one suit in a court of competent jurisdiction in the state, which suit would have long since been settled by final judgment of the Supreme Court of Louisiana. (See affidavit, R. 67).

The bill of complaint does not show that appellant was unwilling to abide the result of a trial of one suit, or that more than one suit would be necessary. Compare *DiGiovanni v. Camden Fire Ins. Ass'n., 56 S. Ct. at p. 5.*

In the last cited case, decided by this Court on November 11, 1935, the rule, often pronounced, was again repeated, that courts of equity, in the exercise of their discretionary powers, should maintain a scrupulous regard for the rightful independence of the state governments and withhold a remedy infringing that independence, which might otherwise be given, where the grounds of complaint are slight or inconsequential.

As to the tax accruing on January 1, 1935, under the Act, even if the question of the legality of the tax

accruing October 1, 1934, had not then been finally decided, there was available prior to January 1, 1935, a statute of the state which became effective December 6, 1934, which specifically provides for a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him *(Act 16, Second Extraordinary Session of 1934*, Louisiana Legislature. See Appendix).

Part III.

SECTIONS 265 AND 266 OF THE JUDICIAL CODE.

Judicial Code, Sec. 265:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." *(28 USCA, 379).*

Judicial Code, Sec. 266, regulating the issuance of injunctions restraining the enforcement of a state statute, contains the following proviso:

> "It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State." *(28 USCA, 380).*

In return to the rule for a temporary injunction appellant specifically raised the question that no injunc-

tion should issue to preclude her from bringing an action *in personam* against the complainants in any court of concurrent jurisdiction, and that no injunction should issue which would deprive her or the State of Louisiana of any rights under *Sec. 266 of the Judicial Code.* (R. 60-61).

The equity courts of the United States are forbidden to issue the process of injunction to interfere with the prosecution of an action *in personam* in a state court of concurrent jurisdiction.

As said in *Kline v. Burke Construction Co., 260 U. S. 226, 43 S. Ct. 79:* "The rule (therefore) has become generally established that where the action first brought is *in personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded." This declaration, made by Justice Sutherland for an unanimous court, is supported by a long line of authority, and was recently affirmed in *Monamotor Oil Co. v. Johnson, 229 U. S. 86, 54 S. Ct. 575.*

In the last cited case: "The state treasurer, having confirmed the facts by an audit of the company's books, caused the appellant and certain of its officers to be indicted for making a false return, procured the Attorney General to bring a civil action against the appellant by attachment to recover the unpaid tax on gasoline imported and used within the state, and notified the appellant that he had revoked its license as a distributor. The individual defendants pleaded guilty and were fined, and the indictment was dismissed, as to the company. The civil suit was pending when the present bill was filed, asserting the invalidity of the law, and praying that the state treasurer and other officials be enjoined from interfering with the conduct of

appellant's business as a distributor, from collecting the taxes imposed by the statutes, and from prosecuting the civil action in the state court."

The district court dismissed the bill pointing out that section 265 of the Judicial Code forbids the granting of the relief prayed for. The judgment was affirmed here.

The fact that in the instant case the bill was filed in the district court of the United States before resort was had (or could be had) to a court of the State, does not alter the rule. In *Grubb v. Public Utilities Commissioner of Ohio, 281 U. S. 470, 50 S. Ct.*, this Court said at *page 477:*

> "It next is said that the suit in the federal court was begun before resort was had to the state court, and therefore that the jurisdiction of the federal court was exclusive and precluded action in the state court. In this the appellant is invoking a rule which is applicable to suits dealing with specific property and involving actual or potential control over the same, where necessarily the court (whether federal or state) first obtaining jurisdiction of the res must hold it to the exclusion of another. Here the litigation was not of that class, but was of such a nature that it could proceed in both courts, in virtue of their concurrent jurisdiction, until there was a final judgment in one, Kline v. Burke Construction Co., 250 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077, when that judgment would become conclusive in the other as res judicata. Chicago, Rock Island & Pac. Ry. Co. v. Schendel, 270 U. S. 611, 616, 46 S. Ct. 420, 70 L. Ed. 757, 53 A. L. R. 1265; Mutual Life Insurance Co. v. Harris, 97 U. S. 331, 336, 24 L. Ed. 959."

Had appellant not been restrained and enjoined from bringing an action *in personam* in a state court for

a determination of the tax liability, and had she brought such action when the tax became due under the statute, no court of the United States could have restrained or enjoined such proceedings, under *Section 265 of the Judicial Code;* and had she not been restrained and temporarily enjoined from suing in the courts of the State, she could have brought proceedings in the state court which would have stayed all proceedings in the federal court, under *Section 266 of the Judicial Code.*

Because of an abuse of power, we are now confronted with a situation where an officer of the State, charged with the duty of collecting a tax, and vested with power to proceed only by a suit *in personam* in the courts of the State, has been restrained and enjoined by a federal equity court to so proceed, with a result equivalent to a judicial repeal of *sections 265 and 266 of the Judicial Code.*

A court of equity cannot be permitted to circumvent the law, nor to do indirectly what it cannot do directly, as was done in this case by restraining the bringing of an action *in personam* in the state courts prior to the time when it was possible to bring such action.

The error committed by the district court serves to emphasize the propriety of the rule approved in *Northport P. & L. Co. v. Hartley; Keokuk & Hamilton Bridge Co. v. Salm; St. Louis, San Francisco Ry. Co. v. Middlekamp,* and in *Matthews v. Rodgers,* all cited *supra.*

Whether the error be regarded as jurisdictional or merely as an abuse of equity power, the decree of injunction should be reversed and the bill dismissed.

Part. IV.

ON THE MOTION TO STRIKE.

Under the old practice the remedy to strike out impertinent and scandalous matter was by exception. Under *Equity Rule 21* exceptions are no longer allowed, but the matter may, on motion, be stricken by order of Court. *Williams v. Pope, 215 F. 1000.* See *Note 541, Equity Rules, 28 U. S. C. A., p. 202.*

Paragraph VIII of the bill of complaint violates *Equity Rules 21 and 25.* The matter therein contained is purely argumentative; there is no statement of ultimate fact; it is totally irrelevant. There is no question of rates involved here.

Paragraph XI of the bill of complaint not only violates *Equity Rules 21 and 25,* but presents no justiciable matter. The paragraph contains conclusions which are impertinent, scandalous and libelous, and concern persons not connected with this suit.

> "Scandal in a pleading consists of any unnecessary allegation bearing cruelly on the moral character of an individual, or stating anything contrary to good manners or anything unbecoming in dignity of the court to hear. Impertinence consists of any allegation that is irrelevant to the material issues made or tendered." *Kelly v. Boettcher, 85 F. 55, 29 C. C. A. 14.*

> "The most objectionable form of impertinence is that which consists of scandalous and libelous matter. This matter is more particularly obnoxious where the harmful allegations concern persons not connected with the suit." *Polk v. Mutual Reserve Fund Life Ass'n., 128 F. 524.*

Paragraph XI of the bill (R. 5) consists entirely of a libel against the majority of the members of the Legislature of Louisiana, who are not parties to these proceedings, by ascribing to them improper and illegel motives in the enactment of the statute under consideration.

It presents no justiciable matter. Courts cannot inquire into the motives of the law-enacting bodies or into the wisdom of the legislation.

> "No principle of our constitutional law is more firmly established than that this Court may not, in passing upon the validity of a statute, inquire into the motives of Congress (citing authorities), nor may it pass upon the necessity for the exercise of a power possessed, since the possible abuse of a power is not an argument against its existence." *Hamilton v. Kentucky Distilleries, 251 U. S. 146, 40 S. Ct. 106.*

In *Spencer v. Merchant, 125 U. S. 355, 8 S. Ct. 926,* quoting the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall, this Court said:

> "The judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."

This same quotation is repeated in *McCray v. United States, 195 U. S. 27, 24 S. Ct. at p. 777.*

In the last mentioned case Justice White, as the organ of the Court, pointed out:

> "Whilst, as a result of our written constitution, it is axiomatic that the judicial department of the government is charged with the solemn duty of enforcing the Constitution, and therefore, in cases properly presented, of determining whether a given manifestation of authority has exceeded the power conferred by that instrument, no instance is afforded from the foundation of the government where an act which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that, in our constitutional system, the judiciary was not only charged with the duty of upholding the Constitution, but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial, and executive departments of the government, upon which our system is founded, and would be a mere act of judicial usurpation."

See also the *Boulder Canyon* Case between the States of Arizona and California, *283 U. S. 423, 51 S. Ct. 522.* The bill of complaint contained an allegation that the "recital in said act that the purpose thereof is the improvement of navigation - - - is a mere subterfuge and false pretense". The Court said: "Into the motives which induced members of Congress to enact the Boulder Canyon Project Act, this Court may not inquire", citing *McCray v. United States (supra)* and other cases.

And as said in *State Board of Tax Com'rs. of Indiana v. Jackson (283 U. S. 527, 51 S. Ct. at p. 343)*:

> "It is not the function of this Court in cases like the present to consider the propriety or justice of the tax, to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation."

Lastly, in *Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. at p. 601*, this Court said:

> "Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry (citing McCray v. United States, supra). Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses."

Assuming that the dominant political party in Louisiana persuaded the Legislature that a tax on the business of selling advertisements furnished an unexplored source of revenue to alleviate the necessities of the fisc, neither this court, nor any other court, can inquire into these circumstances.

Assuming that the dominant political party in Louisiana, through the distribution of patronage, or the withholding thereof, or by other means, induced a majority of the members of the Legislature to enact the statute under consideration, such practice is not peculiar to state action. Whether the federal congress or a state legislature has responded to pressure from a dominant political

party in the enactment of laws, presents no matter open to judicial inquiry.

The motion to strike the irrelevant paragraph VIII and the libelous paragraph IX of the bill was seriously argued below and is seriously urged here, as alternative pleas if the bill be not dismissed for lack of jurisdiction or of equity. The lower court treated this motion as lightly as it treated the questions of jurisdiction and impropriety of equitable interference, and made no comment in its written reasons as to why the motion was denied.

Part V.

FREEDOM OF THE PRESS.

The first amendment to the Federal Constitution imposes no restriction upon the states with reference to abridging the freedom of speech or of the press. The prohibition is directed only against Congress.

The pertinent language of the amendment is:

> "Congress shall make no law - - - abridging the freedom of speech or of the press; - - -."

Complainants contend that by effect of the fourteenth amendment, legislatures of the states are prohibited from passing laws infringing the freedom of the press. This theory finds no support in the jurisprudence of this court. From *Cooley's Constitutional Limitations, 8th Ed. (Carrington) Vol. 1, p. 67, note,* we quote the following:

> "The adoption of the fourteenth amendment has not extended to the several States of the Union the restrictions imposed by the first ten amend-

ments to the Constitution of the United States upon the Federal Government. See Maxwell v. Dow, 176 U. S. 581, 44 L. Ed. 597, 20 Sup. Ct. Rep. 448; Brown v. New Jersey, 175 U. S. 172, 44 L. Ed. 119, 20 Sup. Ct. Rep. 77; Loeper v. Texas, 139 U. S. 462, 35 L. Ed. 225, 11 Sup. Ct. Rep. 577; Caldwell v. Texas, 137 U. S. 692, 11 Sup. Ct. Rep. 224; Re Converse, 137 U. S. 624, 34 L. Ed. 796, 11 Sup. Ct. Rep. 191; Missouri v. Lewis 101 U. S. 22; United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588; Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394."

The effect of the second clause of the Fourteenth Amendment was to protect from the hostile legislation of the states, the privileges and immunities of CITIZENS OF THE UNITED STATES as distinguished from the privileges and immunities of Citizens of the states. To establish a clear and comprehensive definition of this citizenship, the first clause of the Fourteenth Amendment declares that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States." See *Slaughter House Cases, 16 Wall. 36, 83 U. S. 395.*

The liberty guaranteed by the fourteenth amendment against deprivation without due process of law is the liberty of NATURAL not of artificial persons. See *Western Turf Assn. v. Greenberg, 204 U. S. 359, 27 S. Ct. 384.* The appellees are corporations. They do not possess the privileges and immunities of citizens of the United States within the meaning of the Constitution. See *Liberty Warehouse Co. v. Burley Tobacco Growers, (supra).*

A corporation cannot claim the protection of the clause of the fourteenth amendment which secures the privileges

and immunities of citizens of the United States against abridgment or impairment by the law of a state. See *Selovar, Bates & Co. v. Walsh, 226 U. S. 112, 33 S. Ct. 69.*

There is nothing contrary to this in *Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625; Gitlow v. N. Y., 268 U. S. 652, 45 S. Ct. 625; Whitney v. California, 274 U. S. 357, 47 S. Ct. 641; Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655; Powell v. Alabama, 287 U. S. 45, 53 S. Ct. 55,* upon which appellees relied below as in each of these cases the complainant was a citizen of the United States and not an artificial person.

Nor will it do to say that because the stockholders of these corporations are citizens of the United States the corporations must be considered as such. Compare *Bank of Augusta v. Earle, 13 Pet. 519, 10 L. Ed. 274.*

Furthermore, as pointed out in *Near v. Minnesota,* the chief purpose of the constitutional protection of liberty of the press is to prevent previous restraints upon publications.

Nowhere has it ever been held that a person or corporation engaged in the publishing business is exempt from taxation. The following authorities are to the contrary:

In re Jaeger, 29 South Carolina, 438, 7 S. E. 605, It was contended that to require a license for conducting the business of publishing a daily newspaper was in violation of the Constitution of South Carolina in regards to liberty of the press. The Court answered:

> "But we cannot see that a tax on the business of publishing a newspaper is any more an abridgement

of the liberty of the press than a tax on the office, type, and other material used in the business."

City of Norfolk v. Norfolk Landmark Publishing Co., 95 Va. 564, 28 S. E. 959. Objection was made to a license tax imposed on every person, firm or corporation engaged in the publication of a newspaper. The Court said:

> "A tax imposed upon the business of publishing a newspaper is not an abridgement of the freedom of the press. The guarantees of the Constitution and bill of rights in favor of the freedom of the press, freedom of speech, and personal liberty, were never intended to restrict the right of taxation for the support of the government. If these guarantees did restrict the power of taxation, the government would soon be insolvent, and powerless to furnish the protection claimed."

In the latter case the court referred to the note in the *Federalist, p. 632,* containing Hamilton's declaration:

> "I know not by what logic it could be maintained, that the declarations in the State Constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the State legislatures."

Hamilton also said:

> "We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country."

If freedom of the press was said to imply freedom from taxation, the Income Tax law of the United States, which takes a part of every penny collected as income from the business of publishing a newspaper, would be clearly unconstitutional as Congress, by the First Amendment to

the Constitution, is distinctly forbidden to make a law abridging the freedom of the press.

To avoid insurmountable objections, appellees will concede the validity of the Federal income tax, of *ad valorem* taxes, and of corporation franchise taxes. They will object to the tax under consideration solely because it is an occupational license tax. So were the license taxes in the *Jaeger* and *Norfolk* cases; and they were occupational license taxes levied directly upon the business of publishing newspapers.

The tax levied by the Louisiana Legislature is not an occupational license tax on the business of publishing newspapers. The Legislature could have levied such a tax, but it did not do so. It imposed the tax on the business "of selling, or making any charge for, advertising or for advertisements".

It is not essential to liberty of speech and freedom of the press, as constitutionally understood, that profit be derived from the exercise of these rights. Nor was it ever contemplated that the constitutional guarantee should extend to charging for and selling advertising.

In fact, the constitutional guarantee is limited to the right of the citizen to speak and publish his views, subject to punishment for the abuse of that privilege. Liberty of speech and of the press is not an absolute right. *Near v. Minnesota, supra.*

Even if the appellees were citizens of the United States, extended argument would seem to be unnecessary to demonstrate that there is no substance to the complaint

that the statute under consideration infringes upon the freedom of the press as guaranteed by the Federal Constitution.

Appellees rely also upon *Section 3 of Article 1 of the Constitution of Louisiana*, which provides:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

The highest court of Louisiana has already construed that provision as not affording an exemption from taxation. *City of New Orleans v. Crescent Newspaper, 14 La. Ann. 804.* This construction is binding here. *Guaranty Trust Co. of N. Y. v. Blodgett, 287 U. S. 509, 53 S. Ct. 244.*

If there is any burden placed upon liberty of speech and freedom of the press, it is imposed by the appellee corporations who are profiting by engaging in the business of selling or charging for the use of their columns for the expression of views or the presentation of the merit of commercial products.

The state statute does not censure or restrict the free expression of opinions. It merely requires of those who engage in the profitable business of making others pay for the expression of their views, or for advertising their business, a small contribution for the support of government.

There is neither substance, nor federal question, in the complaint that the statute under consideration abridges liberty of speech or the freedom of the press.

Part VI.

DENIAL OF EQUAL PROTECTION.

The bill of complaint does not set forth specifically in what manner the statute deprives the complainants of the equal protection of the laws. (R. 6).

From the general averments of the bill it appears that the assertion rests on the classification adopted by the statute.

The lower court concluded that the statute does not represent a legitimate exercise of the power of classification; that the classification adopted is purely arbitrary and thus denies the equal protection of the laws to those against whom it discriminates; that the fact that there is a difference between the urban and metropolitan press is not sufficient to meet the requirement that classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

The district court cited as its sole authority, *Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423*, and *Stewart Dry Goods Co. v. Lewis, et al., 55 S. Ct. 525.*

The cited cases are essentially different from the case at bar and the distinction is palpable.

In the first case the majority of this court, under a division of five and four, held that a tax of Kentucky on the necessary privilege of recording mortgages, imposed

only when the indebtedness did not mature within five years, was an arbitrary classification which denied equal protection. The fundamental fault found with the statute was that a circumstance which affected only taxable values had been made the basis of a classification under which one was compelled to pay a tax for the enjoyment of a necessary privilege which was furnished to another as a pure gratuity. The predicate of the decision is found in this sentence:

> "The difference relied upon is no more substantial, as the sole basis for the present classification, than a difference in value between two similar pieces of land would be if invoked as the sole basis for a like classification in respect of such property."

In the instant case the classification is based upon a long recognized difference in the nature and type of the business, in organization and management, in the source of the revenue, in power and in opportunity, and in the field of operation.

The dissimilarity between the second case and the instant case is still more manifest and apparent. In that case the majority of this court, under a division of six and three, held another statute of Kentucky, imposing a graduated gross sales tax, to be invalid and used the same analogy as in the other case. It was found that the tax in substance and legal effect was not an occupation tax, or one which imposed an excise upon the conduct of retail business, but was a sales tax or an excise on the act of making a sale, and as such that the operation of the statute was as unjustifiably unequal, whimsical and arbitrary as would be a tax on tangible personal property, say cattle, stepped up in

rate on each additional animal owned by the taxpayer, or a tax on land similarly graduated according to the number of parcels owned.

The tax in the instant case is not a sales tax. It is an occupational license, imposed on the privilege of engaging in the business described in the statute. It is not imposed on each sale made in said business, nor does it increase according to the number of sales, but it is fixed at an invariable percentage of the gross receipts of the business. The gross receipts are used merely as a measure of the tax so that all similarly situated, both as to the character of the business and the amount of gross receipts, pay exactly the same tax.

The court below found no fault in the method of determining the quantum of the tax, but it held the classification arbitrary because of the selection of the subjects of taxation made by the Louisiana Legislature. Because the state in taxing metropolitan newspapers did not include the small country journals, and notwithstanding the differences disclosed by the record between the two businesses, the lower court held that if one newspaper was taxed for the privilege of selling advertisements, all newspapers must be so taxed. Neither of the cases relied on by the lower court goes that far. On the contrary, in the *Louisville Gas & Electric Co.* case the right of a state to make exemptions was recognized; and in the *Stewart Dry Goods Co.* case the principle was affirmed that even a small difference in the method of conducting business may be availed of by government in imposing different taxes.

The lower court might as well have held the statute invalid on the ground that the tax is not imposed upon every conceivable type of agency furnishing means for advertising. It might have concluded that the statute was rendered unconstitutional by the exclusion of those engaged in the business of selling advertisements to be printed on billboards, and on cards to be placed in street cars and buses, and on banners to be flown from the tails of aeroplanes; or of advertisements to be flashed on electrically lighted signs, or otherwise exhibited. Thus, with the same effect, but more clearly, could the lower court have denied to the state all right of selecting subjects for taxation.

Long ago this court announced the principle, from which it has never departed, that the restriction which requires that the essential power of taxation in the states shall not be so exercised as to deny the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupations. That a discrimination in favor of a certain class does not make a statute arbitrary if the discrimination is founded upon a reasonable distinction, or if any state of facts reasonably can be conceived to sustain it, and that such differences need not be great, is, as said by Justice Roberts, made abundantly clear by the past decisions of this court. See *State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527, 51 S. Ct. at p. 543.*

The findings and conclusions of the lower court do not meet the requirements of *Equity Rule 70½*, in that the

findings of fact are not complete, and recourse must be had to the conclusions of law to point out certain facts which are only referred to in the course of explanation, reasoning, or opinion.

The lower court limited its separate findings of fact to the verified pleadings and affidavits filed by the appellees. It made no reference whatsoever to a single, solitary fact established by the pleadings or affidavits filed by appellant. But in the course of its conclusions of law, the lower court recognized that there were differences between the small country journals and the metropolitan newspapers, but concluded:

> "The fact that there is a difference between the urban and metropolitan press is not sufficient to meet the requirement that the classification always 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike' ".

The lower court points to no reason for its conclusion that those similarly circumstanced are not similarly treated.

Nor does the paraphrase attempted by the lower court from the *Louisville Gas* case help to support the conclusion. The state can lawfully tax the country journals and exempt the metropolitan press, if there be sufficient difference between them to constitute two classes, and if the state desires to promote the metropolitan press and discourage the small country journal. Compare *Am. Sugar Refining Co. v. La., 179 U. S. 89, 21 S. Ct. 43; Broad River Power Co. v. Query, 288 U. S. 178, 535 S. Ct. 326.*

This reversal of the situation does not lead, as the lower court concludes, to an inequality readily conceded, nor make constitutional infirmity more strikingly apparent. The paraphrase fails because there is no inequality and no constitutional infirmity. Its failure demonstrates the inapplicability of the *Louisville Gas* case to the instant case. The tax in the instant case is not imposed upon a necessary privilege, but upon the privilege of engaging in a business in which one is free to engage in or not as he chooses.

The court's admission that there are differences between two businesses is inconsistent with its conclusion that discriminations are made between persons similarly circumstanced.

There is no innovation in the classification adopted by the Legislature of Louisiana. It was long theretofore an established and recognized fact that the small country journal, with a circulation of less than 20,000 per week, could not be compared, hence is not in the same class, as the city newspaper with its large circulation and more extensive field of operation.

The affidavits in this record demonstrate the sharp distinction that exists between the business of the newspapers which fall within the statute and those which are without. The character of the business, the source of revenue, the field of operation are entirely different, with a difference so great that in 1909 one author pointed out that it was obviously absurd to try to compare them.

In his work "*The American Newspaper*" (published in 1909), James Edward Rogers, in the course of his comparison of country papers and city papers, makes this remark (p. 35):

> "Obviously it is absurd to assert that a small four-paged country journal with a subscription list of about EIGHTEEN THOUSAND in any way compares with the huge twenty-four paged daily of a large city with over one hundred and fifty thousand subscribers. There is no comparison. - - - With the growth of cities the field of the city paper has grown, and with the increase of communication and travel the city paper has begun to oust the little four-paged conservative journal of the country. - - - The City paper to-day, for instance, covers an area of about two hundred miles. It supplies news not only to the inhabitants of its own city and the residents of suburbs, but it is delivered at all points of the country within a radius of two hundred miles before ten o'clock of the morning it is issued."

The affidavits filed on behalf of appellant show that the classification as adopted actually operates as a classification between the small country journal and the huge city newspaper.

Under these circumstances, how can it be said that the classification does not rest upon a reasonable basis and that it is essentially arbitrary?

The rule is, that "one assailing a legislative classification as violative of equal protection clause *(Const. U. S. Amend. 14)* has burden of showing that it does not rest on a reasonable basis, but is essentially arbitrary." *Whitney v. People of State of California, 274 U. S. 357, 47 S. Ct. 641; Metropolitan Casualty Ins. Co. v. Brownell, 55 S. Ct. 538.*

No such showing has been made in this case. On the contrary it has been shown that the newspapers not included in the classification of the statute are in fact operating an entirely different type of business with distinctions which are recognized in the trade, and which were followed in determining the class to be taxed. Borrowing the language of Justice McKenna:

> "If the action of government have such a basis it cannot be declared to be so palpably arbitrary as to be repugnant to the 14th Amendment. This is the test of its validity, as we have so many times said. We need not cite the cases. It is enough to say that we have tried, so far as that Amendment is concerned, to declare in words, and the cases illustrate by examples, the wide range which legislation has in classifying its objects. To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the 14th Amendment; and such judgment cannot be pronounced of the ordinance in controversy. Quong Wing v. Kirkendall, 223 U. S. 59, 56 L. Ed. 350, 32 Sup. Ct. Rep. 192." *Metropolis Theater Co. v. Chicago, 228 U. S. 61, 33 S. Ct. 441.*

A state does not deny the equal protection of the laws because it recognizes the distinction between a small country journal, appearing weekly or semi-weekly, with a

circulation limited both as to area and number, and carrying local advertisements only, and the metropolitan daily with an extensive circulation and carrying about one-third news and two-thirds advertisements. Compare *Broad River Power Co. v. Query, 288 U. S. 178, 53 S. Ct. 326.*

The state has a right to determine when the character of the business is such as to be called upon to contribute a share to the burdens of government, and it cannot be opposed because other allied businesses are not taxed.

In *Citizens' Telephone Co. v. Fuller, 229 U. S. 322, 33 S. Ct. 833*, the plaintiff asserted that it was denied equal protection of the law under a statute of the State of Michigan which levied an *ad valorem* tax on telephone companies, but exempted those companies whose gross receipts within the State did not exceed $500. The plaintiff urged that the proviso made an unjust discrimination between companies doing the same business by the same means, and imposed a tax on their property because the business of one is large and the other small and that as the tax was not on the business but on the property "each dollar's worth should be treated alike". This Court rejected the contention and pointed out that such rigid equality has not been enforced; that in taxation there is a broader power of classification than in some other exercises of legislation. After reviewing numerous previous cases sustaining all manner of classifications and exemptions, the Court reiterated the principle: "Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous".

Nor can it be said that because there may be competition between the business taxed and the business not taxed, that the classification made by the state is unconstitutional. Mere competition between them is not enough to show that two businesses must be burdened alike. *Heisler v. Thos. Colliery Co., 260 U. S. 245, 43 S. Ct. 83; Ohio Oil Co. v. Conway, 281 U. S. 146, 50 S. Ct. 310; Union Bank & Trust Co. v. Phelps, 288 U. S. 181, 53 S. Ct. 321; Puget Sound P. & L. Co. v. City of Seattle, 291 U. S. 619, 54 S. Ct. 542.*

We respectfully submit that the State Legislature reasonably might have determined that there was fair ground for distinction between newspapers having a circulation of more than 20,000 copies per week, and those falling below that number; that upon the record in this case there is no basis for holding that its action was arbitrary, capricious, or wholly unreasonable; and that the plaintiffs have utterly failed to show just ground in support of their complaint that the statute here involved deprives them of the equal protection of the laws.

Part VII.

CLASSIFICATION UNDER CONSTITUTION OF LOUISIANA.

The bill (paragraph XIII-[1]), (R. 6) incorrectly states the provisions of *Section 8 of Article X of the Constitution of Louisiana of 1921*, and the assertion, in argument, that these provisions are substantially identical with the provisions on the same subject in the Constitutions of 1879, 1898 and 1913, is not supported by comparison.

Under the system of State Government the legislative power is restricted only in so far as a positive prohibition is contained in the State Constitution.

The Constitution of Louisiana specifically vests the power of taxation in the Legislature *(Const. 1921, Art. X, Sec. 1). Interstate Tax Bureau, Inc., v. Conway, 180 La. 453, 156 So. 463.*

Under the Louisiana Constitutions of 1879, 1898 and 1913, as interpreted and construed by the Louisiana Supreme Court, the Legislature was prohibited from levying an occupational license tax, unless it graduated "the amount of such tax to be collected from persons pursuing the several trades, professions, vocations and callings". The Legislature was not permitted to select classes of persons for the imposition of an occupational license tax, nor could it classify the tax or make it progressive. The pertinent portions of the provisions of these Constitutions are identical and read as follows:

> "The General Assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, association of persons and corporations pursuing any trade, profession, business or calling, may be rendered liable to such tax - - - ." *Const. 1879, Art. 206; Const. 1898, Art. 229; Const. 1913, Art. 229.*

The pertinent portion of *Sec. 8 of Art. 10 of the Louisiana Constitution of 1921* reads as follows:

> "License taxes may be levied on such classes of persons, associations of persons and corporations

pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, - - - - . Such license taxes may be classified, graduated or progressive."

These provisions, far from being substantially identical with those of previous constitutions, are, on the contrary, radically different. For the first time the Constitution of 1921 specifically authorized classification, eliminated the requirement as to graduation, and vested upon the Legislature the authority to levy occupational license taxes on such CLASSES of persons, associations of persons and corporations "AS THE LEGISLATURE MAY DEEM PROPER". It further authorized the Legislature, with regard to the taxes, to classify them, graduate them or make them progressive.

The Legislature's power with regard to occupational license taxes was materially and radically changed in two respects. Upon it was vested the discretion of dividing persons, associations of persons and corporations into classes as it deemed proper; it was also vested with the discretion, when it imposed such tax upon such classes of persons, associations of persons and corporations as it deemed proper, to classify the tax, to graduate the tax or to make the tax progressive.

The instant case is controlled by the provisions of the Constitution of 1921. The only importance in noting the change between the provisions of that Constitution and those of previous Constitutions is to avoid being misled by decisions of the Louisiana Supreme Court rendered prior to the Constitution of 1921.

In argument below the appellees relied on cases decided under the previous Constitutions; and cited only one case decided since 1921, that of *State v. Banner Cleaners & Dyers, Inc., 170 La. 76, 127 So. 370.*

That case is authority for only one proposition, viz: that the Legislature having established a class and having undertaken to graduate the tax on that class, must complete the graduation.

Since that case the Supreme Court of Louisiana has sustained classifications both as to subjects and as to the rate of taxation. See *State v. Heyman, 178 La. 479, 151 So. 901; State v. Wilson & Co., Inc., of La., 179 La. 648, 154 So. 636* (appeal dismissed by Supreme Court of United States for want of a substantial federal question, October 8, 1934, *55 S. Ct. 78*).

In the *Heyman* case the Court sustained a tax based upon a percentage of the gross receipts derived from the business of operating an office building, and rejected the contention that the tax was not graduated because there was no minimum fixed which operated to exempt those who derived no revenue from the operation of office buildings.

In the *Wilson* case the Court held valid and constitutional a license tax of 1¼% on gross sales from wholesaling meat products against the contention that such tax was not graduated.

The statute assailed presents no infirmities under the Constitution of Louisiana. The State Legislature has established a class, as it had the right to do; it imposed a

lawful tax upon all falling within said class; and fixed the measure of the tax at a definite percentage of gross receipts. What objection there can be to the statute under the Constitution of Louisiana is not clear.

The lower court though holding the statute unconstitutional under the Louisiana Constitution, did not say how or why the statute offended the State Constitution. Obviously it could discover no reason in support of the conclusion, for had one been discernible it would have been simple to state it. Courts have no right to thus lightly brush aside the presumption of constitutionality which attaches to every legislative act.

CONCLUSION.

We submit:

That neither under the averments of the bill of complaint, nor under the evidence, is there a matter presented within the jurisdiction of the lower court.

That where the action in the federal equity court is one *in personam*, such court has no power to enjoin the bringing of a personal action in another court of concurrent jurisdiction; and when the controversy is one within the provisions of *Section 266 of the Judicial Code* no order or decree can lawfully be entered preventing the bringing of a suit in a court of the state to enforce the statute.

That no case has been made out by the appellees justifying interference by a federal court of equity.

That the classification adopted by *Act No. 23 of the Louisiana Legislature of 1934* does not deny to the appellees equal protection of the laws.

That the decree of the lower court should be reversed and the bill dismissed at appellees' cost.

Respectfully,

GASTON L. PORTERIE,
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CHARLES J. RIVET,
Special Assistant to the Attorney General of Louisiana,
ATTORNEYS FOR APPELLANT.

APPENDIX.

Judicial Code, Sec. 24. Original Jurisdiction. The District Courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, - - - where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States.

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

Revised Statute 1979:

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Act No. 16. Second Extra Session of 1934, Louisiana Legislature.

AN ACT

To carry into effect Section 18, Article X of the Constitution of Louisiana, and to provide against the issuance of process to restrain the collection of any tax and for a complete and adequate remedy for the prompt recovery by every tax payer of any illegal tax paid by him.

Section 1. Be it enacted by the Legislature of Louisiana, That no court of this State shall issue any process whatsoever to restrain the collection of any tax imposed by the State of Louisiana, or by any political subdivision of the State of Louisiana, under authority granted to it by the Legislature or by the Constitution.

Section 2. Any tax payer who has paid any tax, the whole or any part of which has been declared illegal by any court of competent jurisdiction, shall be reimbursed for the amount of the tax so declared to be illegal, as follows:

1. The tax collector shall pay and reimburse the taxpayer for the amount of the tax declared to be illegal out of any funds in his possession, collected or to be collected by him, from the same source as the tax involved in such litigation; or

2. The State Treasurer, or the treasurer of any political subdivision, shall pay and reimburse the tax payer the amount of the tax so declared to be illegal out of any funds in his possession, under his control, or on deposit in such treasury, derived from the same source as the tax involved in such litigation; or

3. The Legislature, as to taxes imposed by the State of Louisiana, shall make appropriations to

pay the amount of the taxes so declared to be illegal; or

4. The political subdivision which has imposed any such tax shall make an appropriation to pay the amount of the tax so declared to be illegal out of funds derived from the same source as the tax involved in any such litigation, or shall include the amount of the tax declared to be illegal in a supplemental budget for its current year or in its next regular budget after judgment has become final, the same to be paid out of funds derived from the same source as the tax involved in such litigation.

Section 3. This Act shall not be held to repeal any law providing that tax payers shall have the right of testing the correctness of their assessments before the courts of the State, except insofar as such laws or parts of laws may be in conflict with this Act.

Approved by the Governor: November 21, 1934.

State of Louisiana

ACT No. 23 OF REGULAR SESSION OF 1934

Newspaper and Picture Show Advertising Tax

Issued by

Supervisor of Public Accounts

BATON ROUGE, LA.

EFFECTIVE AUGUST 1, 1934

ACT No. 23.

House Bill No. 343. By Messrs. Burgess, Gardiner, Heywood and Wimberly.

AN ACT

To provide additional revenue for the State of Louisiana by levying a license tax, in addition to all other licenses and taxes now levied and assessed in this State, upon every person, firm or corporation engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than twenty thousand copies per week, or displayed and exhibited, or to be displayed and exhibited, by means of moving pictures; to require reports of such business, in aid of the collection of such license tax, and to provide for such collection and for the adoption of regulations relative thereto; to fix penalties for violations of this Act or of any of said regulations; and to provide for the disposition of the proceeds of such license tax.

Levying license tax of 2% of gross receipts on newspaper advertisements.

Section 1. Be it enacted by the Legislature of Louisiana, That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited, by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent. (2%) of the gross receipts of such business.

Quarterly reports to be filed with Supervisor of Public Accounts.

Section 2. That on the 1st day of October, 1934, for the period August 1, 1934, to September 30, 1934, inclusive, and thereafter, on each first day of January, April, July and October, for the preceding quarter of the year, every person, firm, association or corporation, domestic or foreign, engaged in such business, or who has transacted any such business, shall file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for such business during the period covered by said report.

Sworn reports.

Section 3. The Supervisor of Public Accounts shall have authority to require reports sworn to cover any transaction during the same period, similar to those provided for in

Section 2, of any person, firm, association or corporation who has paid for such advertising service.

Reports to be accompanied by remittance.

Section 4. Every such person, firm, association or corporation who is required to submit a report, as provided in Section 2, shall accompany such report by a remittance to the Supervisor of Public Accounts, in lawful money of the United States, or by certified check, or by any other means as may be authorized by said Supervisor of Public Accounts, of the amount of the tax shown to be due by said report, or two per cent. (2%) of the gross amount of any such business done during the period covered by such report. The Supervisor of Public Accounts is authorized to audit and revise any report filed under this Act, and to assess additional taxes when and as shown to be due, notice of any such additional taxes to be given by mail to the taxpayer or person owing the tax; and any such taxpayer shall have the right to contest any such assessment in the District Court of the Parish of East Baton Rouge. Provided, that the burden of proving any claim made as to any such report shall be upon the plaintiff.

Refunds.

Section 5. In cases where it is established to the satisfaction of the Supervisor of Public Accounts that a payment or payments have been made under this Act that were not due and collectible, the Supervisor of Public Accounts is authorized to refund such payments out of any funds on hand, collected by virtue of this Act, and not remitted to the State Treasurer according to law.

Rules and Regulations.

Section 6. The Supervisor of Public Accounts is authorized to adopt, and publish in the official journal of the State, reasonable rules and regulations for the purpose of efficiently carrying out the purposes of this Act.

Delinquent taxes.

Section 7. All taxes levied by this Act are due on the day following the last day of the quarter year, as to the business or transactions done or had during such quarter year, and shall become delinquent on the thirtieth day following the last day of the quarter in which such business was transacted; and such delinquent taxes shall bear interest at the rate of one per cent. (1%) per month from their due date, until paid.

Interest and attorney fees.

Section 8. In case it becomes necessary to enforce payment of any tax due under this Act, the Supervisor of Public Accounts may institute suit, in any court of competent jurisdiction, for the amount of the tax and interest, and may also include in such suit a demand for a penalty of 25% of the amount of the tax and interest, as attorneys' fees, which said penalty is hereby imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered;

execution of which judgment, shall take place as provided by existing laws.

Failure or refusal to file report and pay tax.

Section 9. It shall be unlawful for any person, firm, association or corporation, required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof, or any managing agent or officer of any such firm, association or corporation.

(1) To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

(2) To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

Penalty.

And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation.

Prosecutions and suits.

The venue of prosecutions and suits under this Act shall be the parish where the report was made or the tax computed by the taxpayer, or the parish where the business was transacted, or payment therefor received; but as to corporations not maintaining their records in this State, all such proceedings shall be brought at the domicile of their agents for service.

Supervisor of Public Accounts authorized to inspect books and records.

Section 10. For the purpose of enforcing the collection of the tax levied by this Act, the Supervisor of Public Accounts is hereby specifically authorized and empowered to examine, at all reasonable hours, the books, records and other documents of all persons, firms, associations or corporations who have transacted any of the business described in Section 1 hereof, or who are liable for any tax under this Act, or as to the business of whom there is levied the tax provided by this Act, in order to determine and provide for a correct check and ascertainment of the true amount due. In the event that any person, firm, association or corporation, or the employee, agent or officer of said firm, association or corporation, shall refuse to permit such examination of such books, records and other documents by the Supervisor of Public Accounts, as aforesaid, said officer may proceed by rule, in chambers or in open court, in or out of term time, in any court of competent jurisdiction, in the parish where such refusal occurred, and require said person, firm, association or corporation, or employee, agent

or officer of said firm, association, or corporation to show cause why the Supervisor of Public Accounts should not be permitted to examine said books, records, or documents; and in case said rule be made absolute, the same shall be considered a judgment of the court and every violation thereof deemed a contempt of the court, to be punished according to law.

Proceeds collected to be paid quarterly to credit of "Property Tax Relief Fund."

Section 11. The Supervisor of Public Accounts shall make remittance to the State Treasurer, not later than the 30th day after the last day of the preceding quarter, of all taxes, interest and penalties collected by him during the said quarter, and the Treasurer shall place the same to the credit of the Property Tax Relief Fund, to be disbursed and disposed of as provided in the Act creating such fund. Provided that the sum of Two Thousand Dollars ($2,000.00) per month of such collections may be withheld by the Supervisor of Public Accounts for the expense of enforcing this Act.

Change of title of collector of tax.

Section 12. Should the collection of State taxes be transferred by the Legislature from the Supervisor of Public Accounts to any other office, board, commission, officer, or official in whom is vested the collection of the taxes herein levied, said new collector shall have all the authority vested in the Supervisor of Public Accounts by this Act, and the title of such officer, board, commission, office or official shall be substituted for "Supervisor of Public Accounts", where the same appears in any provision of this Act.

Constitutionality.

Section 13. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of said Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved by the Governor: July 12, 1934.

A true copy:

E. A. CONWAY,
Secretary of State.

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Office Supreme Court
FILED
DEC 31
CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1935

No. 303

ALICE LEE GROSJEAN, Supervisor of Public Accounts,
Appellant,

v.

AMERICAN PRESS COMPANY, INC., et al.,
Appellees.

APPELLEES' BRIEF

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Eynon Printing Co., Inc., Washington, D. C.

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IN THE

Supreme Court of the United States

October Term, 1935

No. 303

ALICE LEE GROSJEAN, Supervisor of Public Accounts,
Appellant,

v.

AMERICAN PRESS COMPANY, INC., et al.,
Appellees.

APPELLEES' BRIEF

Opinion Below

A District Court, specially constituted under Section 266 of the Judicial Code as amended (U.S.C.A., Title 28, Sec. 380) for the Eastern District of Louisiana, Baton Rouge Division, rendered an opinion sustaining the petition of these appellees for an interlocutory decree enjoining appellant from enforcing Act 23 of the Legislature of Louisiana of 1934 against them. The opinion of the District Court appears at R. 93, and is reported in 10 F. Supp. at p. 1061. Thereafter a stipulation was filed that the case be submitted for final decision without further argument on the same pleadings and evidence as was produced at the hearing upon the application for a prelimi-

nary injunction. (R. 99). Thereupon, the Court entered the decree of permanent injunction (R. 100); and defendant has appealed therefrom.

Statutes Involved

The statutes involved are so lengthy that for convenience they are included in Appendix A of this brief. The constitutional provisions are also included in Appendix A. Request is made that the statutes and the constitutional provisions be read as a part hereof.

The statutes are:

Act 23 of the Louisiana Legislature, 1934.

Paragraph 1 of Section 24 of the Judicial Code as amended. (U.S.C.A. Title 28, Sec. 41 (1st).)

Paragraph 14 of Section 24 of the Judicial Code as amended. (U.S.C.A. Title 28, Sec. 41 (14).)

Section 266 of the Judicial Code as amended. (U.S.C.A. Title 28, Sec. 380.)

The constitutional provisions are:

Section 3 of Article I of the Constitution of the State of Louisiana.

The First Amendment to the Constitution of the United States.

Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Section 8 of Article X of the Constitution of the State of Louisiana.

Statement of the Case

Appellees do not rely upon the statement of the case in appellant's brief and submit the following statement:

Each of the nine appellees is a Louisiana corporation and owns and publishes one or more newspapers (thirteen in all) in various cities of Louisiana. Appellant is the Supervisor of Public Accounts of the State of Louisiana, and, as such, is charged with the duty of administering

and enforcing the provisions of Act 23 of the Louisiana Legislature of 1934. (Acts, State of Louisiana, Regular Session 1934, page 176.)

Appellees attacked the constitutionality of said Act upon the following grounds (R. 6):

(1) That it violates the provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, relative to the imposition of license taxes;

(2) That it violates the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, guaranteeing to all persons the equal protection of the laws;

(3) That it violates the provisions of Section 3 of Article I of the Constitution of Louisiana of 1921, that: "No law shall ever be passed to curtail or restrain the liberty of speech, or of the press;"

(4) That it violates the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which amendment secures against state action that freedom of the press guaranteed by the First Amendment to the Constitution of the United States.

The District Court held that said Act violates the provisions of Section 8 of Article X of the Constitution of Louisiana, and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and deemed it unnecessary to pass upon the question of whether said Act violated the freedom of the press provisions of the State and Federal Constitutions (R. 97).

The statute complained of is set forth in full in the appendix to this brief. (p. 39 ff.) The relevant provisions having an important bearing on this case, may be summarized as follows:

> (a) "That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, maga-

zine, periodical or publication whatever, having circulation of more than twenty thousand (20,000) copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2%) of the gross receipts of such business." (Section 1, (a));

(b) All persons subject to said Act must, on the first day of October, 1934, and every three months thereafter, file with the Supervisor of Public Accounts, a sworn report showing the amount of gross receipts for its business during the preceding three months (except that the report due October 1, 1934 shall be for the period from August 1st to September 30th, 1934), and shall accompany such report with a remittance to said Supervisor of Public Accounts of the amount of the tax due as shown thereby. (Secs. 2 and 4);

(c) The taxes become due on the last day of each quarter, and bear interest at the rate of one per cent (1%) per month from their due date. (Sec. 7);

(d) In case it becomes necessary to enforce payment by suit, the Supervisor of Public Accounts is entitled to recover in said suit twenty-five per cent (25%) of the amount of the tax and interest, as attorney's fees. (Sec. 8);

(e) "It shall be unlawful for any person, firm, association or corporation, required to file a report or to pay a tax by this Act, or by any regulation issued under authority thereof, or any managing agent or officer of any such firm, association or corporation

(1) To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

(2) To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

And any person violating any provision of this Act

shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding six (6) months, or both, in the discretion of the court, for each violation.

As to corporations violating this Act there shall be recovered, at the suit of the District Attorney an amount not exceeding five hundred dollars ($500.00) for each violation." (Sec. 9.)

The record shows that The Times-Picayune Publishing Company would have to pay a tax under said Act for the first period of two months ending September 30, 1934, amounting to in excess of Three Thousand ($3,000.00) Dollars (R. 38); that the tax to be paid by Item Company, Limited, for each quarter period, would exceed the sum of Three Thousand ($3,000.00) Dollars (R. 24); and that Capital City Press, Journal Publishing Company, Inc., News-Star-World Publishing Company, Inc., and Times Publishing Company, Limited, would each have to pay a tax exceeding Three Thousand ($3,000.00) Dollars per annum (R. 20, 26, 35, 41). The record also shows that the gross receipts of the other three plaintiffs for the period from October 1, 1933, to September 30, 1934, were as follows:

American Press Company, Inc. $82,613.00 (R. 18);
McCormick & Company, Inc. $93,012.00 (R. 33);
Lafayette Advertiser-Gazette, Inc. $40,595.00 (R. 28).

There are approximately one hundred and sixty-three (163) publications published in the State of Louisiana selling and publishing advertising. Only thirteen (13) of these one hundred and sixty-three (163) publications have a circulation of more than twenty thousand (20,000) copies per week, and these thirteen (13) publications are newspapers owned and published by appellees. The tax sought to be imposed by Act 23 of 1934 affects these thirteen (13) newspapers alone. All other publications are exempted from the operation of the statute (R. 50).

There are four daily newspapers published within the State of Louisiana having a circulation of but slightly less than twenty thousand (20,000) copies per week: "The Ruston Leader," published in the City of Ruston, Louisiana; "The Hammond Courier," published in the City of Hammond, Louisiana; "The Crowley Signal," published in the City of Crowley, Louisiana; and "The Morning Advocate," published in the City of Baton Rouge, Louisiana. All four of these newspapers compete with the newspapers of appellees, except that "The Morning Advocate" does not compete with "The Baton Rouge State-Times," as both of said newspapers are owned by the same corporation (R. 50).

There are approximately one hundred and twenty (120) weekly newspapers published in the State of Louisiana and circulated throughout the State, but none of them has a circulation as large as 20,000 copies per week. Said newspapers also compete with the newspapers of appellees, both as to circulation and advertising, and especially as to judicial advertising (R. 17, 19, 22, 24, 31, 34, 36, 38).

The business of newspapers is the gathering and dissemination of information in the form of news, editorial comment and advertising. Newspapers are dependent, in large measure, for the conduct of their business on the revenue from the advertising published therein (R. 54).

For many years it has been, and now is, substantially if not universally, the custom of the newspapers of the United States, to sell their publications to subscribers and readers at far less than the cost of production, with the result that circulation revenue meets only a portion of the cost which newspapers must incur to perform the functions of the press (R. 54).

In order to sell newspapers in that manner and so as to give the widest dissemination to the information which they offer, it is necessary to depend on advertising revenues to meet the major cost of production. Any factor which affects advertising revenue corre-

spondingly and directly affects the ability of newspapers to serve their readers and to perform their duties and functions to the public (R. 54).

Throughout the United States, and in the State of Louisiana, there are six principal media of advertising, to-wit: (1) Newspaper advertising; (2) Magazine advertising; (3) Radio broadcast advertising; (4) Outdoor advertising (principally billboards); (5) Street car card advertising; and (6) Motion picture advertising. The amount spent during the year 1933 throughout the United States for such advertising was approximately as follows: (R. 50).

(1) Newspaper advertising	$453,000,000.00
(2) Magazine advertising	137,000,000.00
(3) Radio broadcast advertising	57,000,000.00
(4) Outdoor advertising	40,000,000.00
(5) Street car card advertising	11,000,000.00
(6) Motion picture advertising Less than	10,000,000.00
Total	$708,000,000.00

The revenues of newspapers are derived almost entirely from monies paid by regular subscribers to or purchasers of said publications, and from monies paid for the insertion of advertisements in said publications. The revenue derived from circulation is a substantial part of the total revenue, and varies materially in its ratio to advertising revenue with respect to the particular publication (R. 51).

While volume of circulation is a factor in fixing advertising rates, it is only one of several factors. The character of circulation, the competitive conditions in the particular territory served by the newspaper, the economic conditions prevailing in the territory, and other factors, are of great importance. Hence, it frequently results that a daily newspaper with a much smaller volume of circulation than another has advertising rates as high as, and in some instances, considerably higher than, those of the other newspaper having a greater circulation, and, ac-

cordingly, obtains an annual income from advertising published in its columns larger than that obtained by the other newspaper of greater circulation (R. 51).

For some time prior to the convening of the Regular Session of the Legislature of Louisiana for the year 1934, and throughout said Session, all of the newspapers published by appellees, except "The Lake Charles American-Press" had been actively opposing, in their editorial policies, the dominant political faction in the State of Louisiana, known as the "Long Faction." "The Lake Charles American-Press," while never an open proponent of said faction, did not take an active editorial stand in opposition thereto until shortly after the convening of said Regular Session, since which time it has maintained an opposition policy. The "Long Faction" had been headed for some years by the late Huey P. Long, ex-Governor of the State, and former United States Senator from the State. This faction dominates and controls all of the executive departments of the State. The present Governor, Oscar K. Allen, is a member and one of the leaders of said faction, and a majority of the members of the Legislature of 1934 were members of said faction during said session (R. 42).

The newspapers published by the appellees have, from time to time, in their editorials, severely criticized the political practices and policies of the "Long Faction" and for some time prior to, and during, the Regular Session of the 1934 Legislature there had been open and vigorous opposition by said newspapers to the policies and practices of said faction. The leaders and various members of said faction, during said time, openly and vehemently denounced said newspapers in political addresses and speeches on the floor of the Legislature, and in circulars widely distributed through employees of the various state departments under their control, and threatened the newspapers with taxation on their advertising (R. 42).

During said Regular Session of the Legislature of 1934,

after the introduction and prior to the final passage of Act No. 23, a circular was issued over the names of Governor Oscar K. Allen and the late Senator Huey P. Long, and was widely distributed throughout the State. Copies thereof were laid on the desk of each member of the Legislature during its Regular Session of 1934 while said Act No. 23 was under consideration. This circular contained the following language:

> "The lying newspapers are continuing a vicious campaign against giving the people a free right to vote. We managed to take care of that element here last week. A tax of 2% on what newspapers take in was placed upon them. That will help their lying some. Up to this time they have never paid any license to do business like everybody else does. It is a system that these big Louisiana newspapers tell a lie every time they make a dollar. This tax should be called a tax on lying, 2c a lie" (R. 43).

On or about September 24th, 1934, in a public address delivered in Sulphur, Calcasieu Parish, Louisiana, the late Senator Long, speaking for the dominant political faction of the State, said:

> "There was only one newspaper in the State that had not joined up with the gang opposing me and that was 'The Lake Charles American-Press.' Well, we tried to find a way to exempt 'The Lake Charles American-Press' from the advertising tax, but did not think we could do it, but we would have done it if we could" (R. 43).

The State of Louisiana has never heretofore attempted to impose a license tax on newspapers.

Summary of Argument

The District Court had jurisdiction to determine the questions presented, including those raised under the Constitution of Louisiana.

The case presented called for the exercise of jurisdiction by a court of equity.

The statute violates the provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, which requires that license taxes must be levied on all persons engaged in the trade, business, occupation, vocation or profession upon which a license tax is imposed.

The Act violates the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it denies appellees the equal protection of the laws.

The Act violates the provisions of the Constitution of Louisiana and of the Constitution of the United States guaranteeing freedom of the press.

ARGUMENT

I.

Jurisdiction

(A) The District Court Had Jurisdiction to Determine the Questions Presented, Including Those Raised Under the Constitution of Louisiana.

The District Court had jurisdiction on two separate and distinct grounds, to-wit, under Paragraph 1 and under Paragraph 14 of Section 24 of the Judicial Code (U.S.C.A., Title 28, Sec. 41).

The first paragraph of said section gives the District Court jurisdiction "of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and . . . arises under the Constitution or laws of the United States . . ." This paragraph concludes with the following sentence: "The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section."

Paragraph 14 of this section gives the District Court jurisdiction "of all suits at law or in equity authorized by law to be brought by any person to redress the de-

privation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States: . . ." As heretofore pointed out, a suit would lie under this paragraph without regard to "the sum or value of the matter in controversy."

Jurisdictional Amount Unnecessary in This Case

There is no question but that the alleged deprivation of the rights of appellees is under color of a law of the State of Louisiana. The question is whether the right of which each appellee is deprived is a "right," secured by the Constitution of the United States.

It is settled that freedom of speech and of the press are among the fundamental "personal rights" and "liberties" safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.

Near v. *Minnesota*, 283 U. S. 697 (1931);
Stromberg v. *California*, 283 U. S. 359 (1931);
Gitlow v. *New York*, 268 U. S. 652 (1925);
Whitney v. *California*, 274 U. S. 357 (1927).

As said by this court in *Near* v. *Minnesota*:

> "It is no longer open to doubt that the liberty of speech and of the press is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guarantee of fundamental rights of person and property."

It is equally well settled that a corporation is a "person" within the meaning of the due process and equal protection clauses of the Fourteenth Amendment.

Liggett Co. v. *Baldridge*, 278 U. S. 105 (1928).

The case of *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), is decisive of this question. That was a suit

brought by a corporation, which operated a parochial school, to enjoin a statute of Oregon, requiring that all children must attend the public schools, as unreasonably interfering with the liberty of parents and guardians to direct the upbringing and education of children under their control. The court sustained the attack on the statute as against the direct contention that this question could not be raised by a corporation; but could only be raised by the parents of the children. This court said:

> "Appellees are corporations, and therefore, it is said, they cannot claim for themselves the liberty which the 14th Amendment guarantees. Accepted in the proper sense, this is true. Northwestern Life Ins. Co. v. Riggs, 203 U. S. 243, 255; Western Turf Asso. v. Greenberg, 204 U. S. 359, 363. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action."

In the light of the foregoing, it is submitted that the case presented is one within the purview of Paragraph 14 of Section 24 of the Judicial Code, and that the District Court had jurisdiction thereunder as to each of these appellees, without regard to the "sum or value of the matter in controversy."

Raich v. *Truax,* 219 Fed. 273 (1915), aff'd,
Truax v. *Raich,* 239 U. S. 33 (1915);
Crane v. *Johnson,* 233 Fed. 334 (1916), aff'd in 242 U. S. 339 (1917);
Schlosser v. *Welsh,* 5 F. Supp. 993 (1934).

Jurisdictional Amount Present, in Any Event, as to at Least Six of the Appellees

The test of jurisdiction under Paragraph 1 of Section 24 of the Judicial Code is that the total amount of the tax demanded, or which may be demanded, within any time

reasonably required to conclude the litigation, exceeds the jurisdictional amount. *Healy* v. *Ratta*, 292 U. S. 263 (1934). Eighteen months have already elapsed since the taxes sought to be imposed by Act 23 of 1934 began to accrue. The amount of the tax accruing during the first twelve months was in excess of Three Thousand Dollars ($3,000.00) as to each of the appellees, except American Press Company, Inc., McCormick & Company, and Lafayette Advertiser-Gazette. The amount of the tax for the eighteen months period as to American Press Company, Inc. and McCormick & Company is in excess of Twenty-five Hundred ($2,500.00) Dollars, if calculated on the basis of their gross receipts for the period from October 1, 1933, to September 30, 1934; and the record shows that the gross receipts for the twelve months period ending September 30, 1935 will be in excess of the receipts for the previous twelve months period. There can, therefore, be no doubt that the Court had jurisdiction under Paragraph 1 of Section 24 of the Judicial Code as to all of the appellees except the three named above; and it would appear that under said provision the Court had jurisdiction, also, as to American Press Company, Inc. and McCormick & Company.

Even if jurisdiction would not have existed, if the suit had been brought by the three above named appellees alone, the three above named appellees were entitled to join as co-plaintiffs with the other appellees, in order that the entire subject matter of the litigation might be once and for all time, in one action, settled as between the parties interested therein. If the statute is void as to one appellee it is void as to every other appellee. Every appellee is within the terms of the statute and the issues of fact and law applicable to one appellee are applicable to every other appellee. If the jurisdictional amount in controversy exists as to one appellee, others interested in obtaining the object sought in the suit, to have the statute declared void, can join as co-plaintiffs even though with

respect to these latter the jurisdictional amount is not involved. This follows under Equity Rule No. 37 and under cases holding that where a tax-levying statute is sought to be declared unconstitutional any number of taxpayers taxed thereby can join as plaintiffs, and jurisdiction as to each exists, if the jurisdictional amount exists as to any one of them. Examples are *Gramling* v. *Maxwell,* 52 F. (2d) 256 (1931), and *Everglades Drainage League et al.* v. *Drainage District,* 253 Fed. 246 (1918), both proceedings to enjoin under Section 266 of the Judicial Code taxes levied by State legislatures, and from the latter of which decisions we quote as follows:

> "This exhibit, therefore, shows the jurisdictional amount in controversy in Broward County between one of the complainants and all the defendants except the Tax Collector of Dade County. This being so, the joinder of the other parties complainant and the tax collector of Dade County as defendant, ceases to be a jurisdictional question; and the motion to dismiss the bill for want of jurisdiction will be denied."

The District Court Had Jurisdiction to Decide Non-Federal Question Where Substantial Federal Question is Also Involved.

The jurisprudence of this Court is settled to the effect that while a Federal Court may not assume jurisdiction of a separate and distinct non-Federal cause of action, because it is joined in the same complaint with the Federal cause of action, yet, where two distinct grounds in support of a single cause of action are alleged, only one of which presents a Federal question, and the Federal question brought is not plainly wanting in substance, the Federal Court, even though the Federal ground be not established, may, nevertheless, retain and dispose of the case upon the non-Federal ground. This rule applies to hearings on applications for injunctions under the provisions of Section 266 of the Judicial Code, as well as to cases in general in the United States District Court. (*Hurn* v.

Oursler, 289 U. S. 238 (1933); *Moore* v. *N. Y. Cotton Exchange*, 270 U. S. 593 (1926); *Binderup* v. *Pathe Exchange*, 263 U. S. 291 (1923); *Louisville & Nashville Railroad* v. *Garrett*, 231 U. S. 298 (1913); *Siler* v. *Louisville & Nashville Railroad Co.*, 213 U. S. 175 (1909); *Lincoln Gas & Electric Co.* v. *Lincoln*, 250 U. S. 256 (1919).

We feel confident that in the latter portion of this brief appellees demonstrate that the state statute violates the Federal Constitution in both of the respects claimed. Certainly, the Federal questions presented are substantial, and are sufficient to give jurisdiction.

(B) The Case Presented Called for the Exercise of Jurisdiction by a Court of Equity.

The general rule in Louisiana is that a suit will not lie to recover taxes paid under protest. *Ohio Oil Co.* v. *Conway*, 279 U. S. 813 (1929), wherein this Court said:

> "The statute provides for the enforced payment of the tax quarterly in each year. If the tax be paid during the pendency of the suit, and the statute be adjudged invalid by the final decree, the plaintiff will be remediless. The laws of the State afford no remedy whereby restitution of the money so paid may be enforced, even where the payment is under protest and compulsion."

The statement above quoted presents a precise picture of the situation which confronted these appellees. It is true that Section 5 of Act 23 of 1934 provides that: "In cases where it is established to the satisfaction of the Supervisor of Public Accounts that a payment or payments have been made under this Act that were not due and collectible the Supervisor of Public Accounts is authorized to refund such payments out of any funds on hand, collected by virtue of this Act, and not remitted to the State Treasurer according to law." But this provision clearly relates only to cases where the taxpayer has miscalculated the amount of the tax and would not au-

thorize a refund on the ground that the law itself is invalid. Moreover, there is no method to compel the refund to be made, as the question is left entirely to the discretion of the Supervisor of Public Accounts. The refund is provided for only "where it is established to the satisfaction of the Supervisor of Public Accounts" that a refund is due. Finally, the refund can only be made "out of any funds on hand collected by virtue of this Act, and not remitted to the State Treasurer according to law." And Section 11 of the Act provides that "The Supervisor of Public Accounts shall make remittance to the State Treasurer, not later than the 30th day after the last day of the preceding quarter."

Act 16 of the Second Special Session of 1934 has no bearing on the case at bar:

(1) Because it was adopted several months after the filing of this suit, and equity jurisdiction was not lost, because since the filing of the bill an adequate legal remedy may have become available.

Dawson v. *Kentucky Distilleries Co.*, 255 U. S. 288, 295 (1921).

(2) Because it does not afford an adequate remedy at law.

Atlantic Coast Line R. R. v. *Daughton*, 262 U. S. 413 (1923);

Educational Films Corp. of America v. *Ward*, 282 U. S. 379 (1931).

The statute in question does not authorize the bringing of a suit to procure reimbursement, nor does it authorize repayment, with interest. The only section of the statute which could possibly be urged as applicable to the present case is the provision of paragraph 2 thereof that: "The State Treasurer, or the treasurer of any political subdivision, shall pay and reimburse the taxpayer the amount of the tax so declared to be illegal, out of any funds in his possession, under his control, or on deposit in such

treasury, derived from the same source as the tax involved in such litigation"

There is no assurance that if all or any of the appellees paid this tax to the Supervisor of Public Accounts and then brought suit to recover it, there would, at the termination of this suit, be in the hands of the State Treasurer any amount, derived from said tax. Indeed, the entire provision can well be construed as merely imposing a duty upon the State Treasurer left entirely within his discretion, and dependent upon the circumstances of the particular case.

Moreover, equity jurisdiction can be predicated in this case upon the sole ground of avoiding a multiplicity of suits. The issues of law and of fact are the same between these nine appellees and the State of Louisiana. If the injunction had not been granted, nine civil suits could have been brought against appellees each three months, and during each such period eighteen criminal proceedings could have been brought against the appellees and a like number against their principal officers.

Matthews v. *Rodgers*, 284 U. S. 521 (1932).

Sections 265 and 266 of the Judicial Code Do Not Prohibit the Relief Granted by the Lower Court

Section 265 of the Judicial Code (U. S. C. A., Title 28, Sec. 379), provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Section 266 of the Judicial Code (U. S. C. A., Title 28, Sec. 380), contains a provision that: "If before the final hearing of such application" (the application for the interlocutory injunction) "a suit shall have been brought in a court of the state having jurisdiction thereof under

the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order, pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing and notice of ten days, served upon the Attorney General of the state that the suit in the state courts is not being prosecuted with diligence and good faith."

This Court, in *Wells Fargo & Co.* v. *Taylor*, 254, U. S. 175, 183 (1920), referred to the provisions of Section 265 of the Judicial Code, and said:

> "The provision has been in force more than a century, and often has been considered by this court. As the decisions show, it is intended to give effect to a familiar rule of comity, and, like that rule, is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the Federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which, of course, is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. *In recognition of this it has come to be settled by repeated decisions and in actual practice that, where the elements of Federal and equity jurisdiction are present, the provision does not prevent the Federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to the Constitution of the United States.* Ex parte Young, 209 U. S. 123; Truax v. Raich, (supra.)" (Emphasis supplied.)

The recent decisions of this Court establish beyond question that Section 265 of the Judicial Code does not bar

federal courts from staying collection of a state tax if the state proceedings have not passed from the administrative into the judicial stage. *City Bank Farmers Trust Co.* v. *Schnader,* 291 U. S. 24 (1934); *Hill* v. *Martin, State Tax Commissioner,* and *Dorrance* v. *Martin, State Tax Commissioner,* Nos. 193 and 194 of this Term, decided December 16, 1935, United States Law Week of December 17, 1935, page 26.

That portion of Section 266 of the Judicial Code, dealing with abatement of the action in the Federal Court "obviously refers to those cases where no temporary restraining order has been issued, and where, before final hearing on the application for the interlocutory injunction, a suit has been brought in the state court to enforce the statute or order complained of, accompanied by a stay of all proceedings under such statute or order."

> *Union Light Heat & Power Co.* v. *R. R. Com.,* 17 F. (2d) 143, 147 (1926).

Moreover, as said by this court in *Dawson* v. *Kentucky Distilleries,* supra at p. 297:

> "The stay contemplated by Congress is a general one, which would protect, among others, those who had already sought protection in the Federal Court."

No suit was instituted in the state court to enforce the provisions of Act 23 of 1934. Nor was there any attempt, before the final hearing of the application for an interlocutory injunction, to obtain the permission of the Federal Court to bring such a suit. Nor did appellant offer, at any time, to accompany such suit with a stay of any nature, much less one that would protect the appellees against either civil or criminal proceedings. On the contrary, appellant entered into a stipulation that the restraining order should "remain in full force and effect, without the necessity of entry of any formal order renewing same, until the hearing

by the statutory court of three judges of the application of plaintiffs for a preliminary injunction." (R. 15). The hearing on the application for a preliminary injunction was fixed for November 23, 1934, and was had on that day. (R. 15). Appellant filed no pleading until the case was called for hearing on November 23, 1934, at which time appellant filed a motion to dismiss, to strike, and an answer, in one document. It was not until then that appellant raised any question as to the provisions of Section 266 of the Judicial Code.

Appellant is now precluded from raising this question. This appeal is not from the order granting the preliminary injunction but is an appeal from the final decree. No appeal was ever taken by appellant from the preliminary injunction. On the contrary, appellant agreed that the case should be submitted for the final decision on the same record as was made up on the hearing for the preliminary injunction. Appellant cannot now raise any question as to whether either the restraining order or the preliminary injunction should have been granted.

II.

Discrimination

(A) Act 23 of 1934 Violates the Provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, Which Requires that License Taxes Must be Levied on All Persons Engaged in the Trade, Business, Occupation, Vocation or Profession Upon Which a License Tax is Imposed and Must be Based Upon the Gross Receipts from Such Trade, Business, Etc.

Act 23 of 1934 is unquestionably a license tax act. The title recites that it is "to provide additional revenue for the State of Louisiana by levying a license tax." Section 1, which is the section levying the tax, provides that the persons and concerns theretofore enumerated shall "pay a license tax for the privilege

of engaging in such business in this State of two per cent. (2%) of the gross receipts of such business."

It has been established that this law is applicable to no publication except the thirteen newspapers of appellees and that the other one hundred and fifty publications published in Louisiana are exempted from the operations of said act by virtue of its provision that it shall apply only to publications "having a circulation of more than 20,000 copies per week."

Section 8 of Article X of the Constitution of Louisiana of 1921 provides:

> "License taxes may be levied on such classes of persons, associations of persons and corporations, pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, except clerks, laborers, ministers of religion, school teachers, graduated trained nurses, those engaged in mechanical, agricultural or horticultural pursuits, or in operating sawmills. Such license taxes may be classified, graduated or progressive."

The Constitutions of 1879, 1898 and 1913 contain substantially identical provisions (Article 206 of the Constitution of 1879; Article 229 of the Constitution of 1913), except that the previous constitutions required that the amount of such tax must be graduated and did not contain the provision in the concluding sentence of the Article of the Constitution of 1921 that "such license taxes may be classified, graduated or progressive."

State v. *Banner Cleaners and Dyers*, 170 La. 76, 127 So. 370 (1930).

The Supreme Court of Louisiana has uniformly held under all of the Constitutions from 1879 to the present day that a license tax was invalid unless it bore upon every person engaged in the business, occupation or profession sought to be affected and that this doctrine applied even though the Legislature, through mere in-

advertence, had failed to provide for a license tax on business whose receipts were between certain figures. Thus, in the case of *State* v. *Southern States Alcohol Co.*, 137 La. 72, 68 So. 217 (1915), the court held that the inadvertent failure to impose a license tax on those whose receipts were between $100,000.00 and $150,000.00, while imposing such a tax on those in the same line of business whose receipts fell either above or below these figures, violated the provisions of the Constitution of 1898. The court said:

> "If a part of the thing to be graded is left out, if some of the persons, firms or corporations to be classified are left out, there is not a complete gradation or classification, but only a partial one (in other words there is not a gradation or classification but only the commencement, or attempt at one), and, needless to say, this last is not what Article 229 of the Constitution contemplates when it requires a gradation or classification; but what it contemplates and requires is a gradation or classification that is complete, that embraces all the persons, firms or corporations subjected to the license, or, which is the same thing, who must be subjected to it if discrimination and consequent unconstitutionality is to be avoided."

In the recent decision of *State* v. *Banner Cleaners & Dyers, supra,* the Supreme Court of Louisiana made a like ruling under the Constitution of 1921 as to an act which inadvertently failed to provide for a license when the gross annual receipts were more than $5,000.00 and less than $6,000.00. The court reiterated its language in the *Southern States case, supra,* and expressly held that the Constitution of 1921 made no change in the law in this respect.

(B) Act 23 of 1934 Violates the Provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in That it Denies Appellees the Equal Protection of the Laws.

Act 23 of 1934 arbitrarily discriminates against Appellees in the following respects:

(1) It imposes a tax on advertising appearing in newspapers and other publications and in moving pictures, and exempts from such taxation advertising by means of other media, to-wit: Radio broadcast advertising, outdoor advertising, and street car card advertising;

(2) It imposes a tax on advertising appearing in the thirteen newspapers published by plaintiffs, and exempts from taxation advertising appearing in all of the other one hundred and fifty newspapers and other publications in Louisiana which sell and publish advertising.

Considered in essence as a tax on advertising, the tax is clearly discriminatory, because it is imposed on the two largest advertising media, newspapers and magazines, and on the smallest medium, moving pictures, and is not imposed on the other three media of advertising which, as to volume and importance, lie between the media upon which the tax is imposed.

Considered separately as applying to newspapers and other publications, there is no logical or reasonable basis for taxing newspapers and other publications having a circulation of more than twenty-thousand per week and exempting all others.

In the first place, the uncontradicted evidence shows (R. 51, 52) that volume of circulation is only one of several factors affecting the rate and volume of advertising and the consequent revenue derived therefrom. Even if the theory were sound that mere size of business would justify a difference in classification, volume of circulation could not be a proper basis for classification as to a tax on advertising in newspapers. Circula-

tion has no fixed relation to volume of advertising or advertising revenue, and a classification based thereon is inherently arbitrary.

In the second place, the mere size of a business affords no basis for taxing less than ten per cent of the concerns engaged therein and exempting all others. The newspapers published by plaintiffs are engaged in identically the same business as are those newspapers which are exempted from the operation of the statute.

As said by this Court in *Cotting* v. *Godard*, 183 U. S. 79 (1901):

> "This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences of of the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

The Act in question is clearly in conflict with the settled jurisprudence of this Court that a classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Louisville Gas Co. v. *Coleman*, 277 U. S. 32 (1928);
Quaker City Cab Co. v. *Pennsylvania*, 277 U. S. 389 (1928);
Stewart Dry Goods Co. v. *Lewis*, 294 U. S. 550 (1935).

Appellant seeks to justify the separate classification of newspapers having a circulation of more than 20,000 copies per week on the ground that this operates as a classification between the small country journal and the huge city newspaper and that the respective business of

the two are entirely different. The record does not support any such contention. On the contrary, the affidavits filed by the appellant fail to show that there is any substantial difference between them except as to size of business and as to the volume of national advertising appearing therein. There is not even a suggestion that the country newspapers do not still continue to carry a substantial volume of local advertising.

Moreover, the record shows that there are four daily newspapers exempted from the operation of the statute; that these newspapers conduct business identical to that of these appellees who are subjected to the statute; and that these exempted daily newspapers are in direct competition with appellees' daily newspapers.

We deem it unnecessary to discuss any of the decisions of this Court cited by appellant on this point, except to point out that in each of these cases where the statute was upheld the basis of the decision was that the business exempted from the operation of the statute was substantially different from that subjected to the operation of the statute, and hence that there was a reasonable, and not an arbitrary, basis for the classification. For example, in the case of *Citizens' Telephone Co.* v. *Fuller,* 229 U. S. 322, 332 (1913), this Court said:

> "It has a reasonable basis, resting on a real distinction. It is not a distinction based on mere size only, as contended by appellant, nor upon the mere amount of business done."

III.

Abridgement of the Freedom of the Press

(A) The Constitutional Guaranties Against Abridgement of the Freedom of the Press Were Intended to Prohibit Every Form of Abridgement Conceivable in the Minds of Hostile Legislatures.

A fundamental issue in this case is whether the Legislature of Louisiana has the power to levy a gross re-

ceipts tax on the advertising portion only of the business of the press, which in effect is a tax upon the press itself, and to make such a tax a condition precedent to a license to do business in the State of Louisiana.

These appellees contend that the Legislature has no such power. Both the Constitution of the United States and the Constitution of the State of Louisiana prohibit the abridgement of the freedom of the press in any such manner. No conclusion can be drawn from a perusal of the record in this case other than that Act 23 of the Legislature of Louisiana for 1934 constitutes an abridgement of the freedom of the press in violation of both the Federal and State Constitutions. The Act provides for a licensing of the press and a payment of a gross receipts tax on that portion of the revenues of the press derived from the sale and publication of advertising. Further, the Act is limited in its applicability to but thirteen newspapers out of a total of 163 in the State of Louisiana (R. 50), of which thirteen newspapers twelve were active in their opposition to the dominant political group in the State, which group controlled the Legislature and at whose dictates the Legislature passed this law. (R. 43.)

The punitive purpose of this statute can be no better illustrated than by what Senator Long and Governor Allen said in the circular which they distributed in the Legislature at the time Act 23 was under consideration:

> "It is a system that these big Louisiana newspapers tell a lie every time they make a dollar. This tax should be called a tax on lying, two cents per lie." (R. 43.)

Senator Long confirmed the purpose of the Act in his speech at Sulphur, Louisiana, on or about September 24, 1934, when he said:

> "There was only one newspaper in the State that had not joined up with the gang opposing me and that was the 'Lake Charles American-Press.' Well, we tried to find a way to exempt the 'Lake Charles Amer-

ican-Press' from the advertising tax, but did not think we could do it, but we would have done it if we could." (R. 43.)

The American-Press joined as a plaintiff below.

The framers of the Constitution of the United States were familiar with every conceivable effort to restrain the press. In the appendix to this brief there will be found a brief resumé of the history of the struggle for a free press and it is respectfully requested that the same be considered and read as a part hereof.

Among the efforts to restrain the press with which the framers of the Constitution were familiar were licensing, censorship, taxation, writs of attachment, seditious libel and injunction proceedings. Taxation as a form of restraint was well known and particularly obnoxious to our forefathers.

The historical background of the First Amendment was fully discussed by this Court in its decision in *Near* v. *Minnesota*, supra. That case dealt with an attempt by a legislature to suppress newspapers by injunction and this Court held that a legislature was without such power.

The real issue there, as here, was over the attempt by the legislature to exercise a power prohibited by the Constitution.

Not only the First Amendment to the Constitution of the United States but the Fourth and Fifth Amendments grew out of the knowledge of our Constitution makers of efforts to control the press, which, if successful, would make it easy for dictators to control their subjects.

In the case of *Boyd* v. *United States*, 116 U. S. 616 (1886), this Court discussed the history of the Fourth and Fifth Amendments to the Constitution, and in its discussion referred to the celebrated Wilkes and Entick cases which arose in England just prior to the American Revolution.

It is inconceivable that when the framers of the Constitution adopted the broad language included in the First Amendment thereof that there was any doubt in their

mind as to its being all-inclusive or that they had any mental reservations. As this Court said of the Fourth and Fifth Amendments in the Boyd case supra:

> "The struggles against arbitrary power, in which they had been engaged for more than twenty years, would have been too deeply engraved in their memories to allow them to approve of such insidious disguises of the old grievances which they had so deeply abhorred."

At the time the Constitution was adopted, the press of England was subject to taxation. The taxes were known as the taxes on knowledge and they were not repealed in England until many years after the adoption of our Constitution.

Two distinguished writers have stated that the American Revolution really began in 1765 when the British Government sent the stamps for newspaper duty to the American Colonies. (American Debates by Marion Mills Miller, Vol. 1, p. 20, John Lennox and the Taxes on Knowledge by William Stewart, p. 8.)

At the outbreak of the war for independence and at the time of the adoption of the Constitution, there were stamp taxes on circulation of and taxes on advertising printed in English newspapers. The circulation tax became effective in 1712 and it was not repealed until 1855. The advertising tax became effective in 1712 and was abolished in 1853. (James Paterson, The Liberty of the Press,—London, 1880, pp. 56-58.)

During the debates on the ratification of the Constitution, one of the burning issues before the public was the failure of the constitutional convention to include in the body of the document a so-called bill of rights including a guaranty of a free press, and the Constitution itself was not adopted until the framers thereof had pledged themselves to submit such a bill of rights with a free press guaranty to the first session of congress convening after ratification. Richard Henry Lee, Eleazer Oswald, Melancthon Smith, and other patriots in the debates over ratifica-

tion specifically assailed the Convention for failing to include a free press provision which would prohibit suppression of the press by taxation. (See Appendix B hereof.)

The very First Amendment of the Constitution included in that bill of rights contains the provision prohibiting congress from abridging the freedom of the press or free speech. For many years, this provision was regarded solely as a prohibition against congressional action, but with the ratification of the Fourteenth Amendment of the Constitution it was held to be a prohibition against action by the State Legislatures as well. *Near* v. *Minnesota, supra; Gitlow* v. *New York, supra; Whitney* v. *California, supra.*

Therefore, it must be concluded, that the framers of the Bill of Rights had no mental reservations when they drafted the First Amendment. That amendment was written to protect the people in their right to have a press free from restraint from whatsoever hostile source the threat of restraint might spring, and from any method sought to be applied,—whether that method be censorship, licensing, taxation, seditious libel, injunction, writ of attachment or anything else.

(B) The Power to Tax the Press is the Power to Destroy It—Such Power Cannot Be Exercised By a Legislature In Violation of the Constitutional Prohibitions.

This record shows that the function of the newspaper press is the gathering and dissemination of information in the form of news, editorial comment and advertising (R. 54, 56).

The record further shows that newspapers have but two principal sources of revenue,—from the sale of their publications, known as circulation revenue, and from the sale of advertising, known as advertising revenue (R. 51). There is no fixed relation between the two (R. 51). Both constitute the lifeblood of a newspaper and anything which depletes the revenues of a newspaper

from either source, impairs the ability of that paper to serve its function.

The principle that the power to tax is the power to destroy has been imbedded in our jurisprudence since the decision of this Court in *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819).

Where the power to tax exists, there is no limit on the legislature's discretion as to the amount of the tax. If it has the right to tax at all, it has the right, if it so desires, to tax the particular business right out of existence. *A. Magnano Co.* v. *Hamilton*, 292 U. S. 40 (1934).

The oppressiveness of the burden cannot interdict the tax. *Stewart Drygoods Company* v. *Lewis, supra.*

These appellees are not discussing the burden of this particular tax. Rather, they assert that the Legislature does not have the power to levy a tax on their business such as it has levied. If it can tax the revenues which they receive from the printing and publishing of advertising, the Legislature can tax the revenues which they receive from circulation,—the distribution of their newspapers to their readers.

If the Legislature can tax advertising, when published in a newspaper, it can tax news, or it can tax editorial comment as and when they are published.

If the Legislature can tax advertising receipts two per cent, as it did in this case, it can tax advertising right out of existence. In fact, the record shows that one of the purposes of this tax as alleged at the hearing in the District Court, was to divert business from newspapers having a circulation of more than 20,000 per week to newspapers with less than 20,000 per week. (R. 70, 71, 74, 75, 77, 80, 82, 84, 88.)

This purpose to divert business from newspapers having a circulation of more than 20,000 per week to newspapers with a circulation of less than 20,000 per week has also been advanced by appellant in its brief before this Court, and it must be considered as an admission of an intent by the Legislature to interfere with the business of

a particular group of newspapers and to regulate that business through the device of taxation. (Appellant's Brief, Parts VI and VII.)

Appellant argued in the court below and has argued in its brief here that the First Amendment to the Constitution does not prohibit the State of Louisiana from abridging the freedom of the press through action by its Legislature. The contrary was squarely decided by this Court in *Near* v. *Minnesota, supra.*

The record is replete with evidence (R. 54, 56) that newspapers are dependent for their existence upon the revenues which they receive from advertising and circulation and that they cannot exist if either source is impaired or destroyed.

This Court has the power to inquire into the substance of this tax. It should not be confused by the shadow. *Stewart Dry goods Company* v. *Lewis, supra.*

The levy is nothing more nor less than a direct tax upon the newspaper publishing business. Its effect is immediate, direct and punitive,—not remote, indirect or harmless.

In *Brown* v. *Maryland,* 12 Wheat. 419 (1827), a tax on the occupation of an importer was held a tax on imports obnoxious to the Commerce clause.

"All must perceive," said the Court, "that a tax on the sale of an article, imported only for sale, is a tax on the article itself."

In the present case, this finding might be applied to read:

> "All must perceive that a tax on advertising printed in a newspaper is a tax on the newspaper itself."

In *Cook* v. *Pennsylvania,* 97 U. S. 566 (1878), the equivalent of this very fact was found by this Court, when it held that a tax on the amount of an auctioneer's sales was a tax on the goods themselves.

In this connection, the Supreme Court of Missouri has

had occasion to pass upon an enactment making it an offense for a civic league to publish the results of investigations into the fitness of candidates for public office under certain circumstances. In holding the statute to be offensive to the freedom of the press clause of the Missouri constitution, the court said:

> "Anything which makes the exercise of a right more *expensive* or less convenient, more difficult or less effective, impairs that right." (Emphasis supplied.)
>
> Ex parte Harrison, 212 Mo. 88, 110 S. W. 709, 16 L.R.A. (N.S.) 950, 126 Am. St. Rep. 557, 15 Ann. Cas. 1 (1908).

An application of this test to the Louisiana newspaper tax statute must inevitably result in a declaration of its invalidity on the same ground.

A tax on the principal source of revenue of a newspaper is a tax upon its subsistence. As said by Mr. Justice Holmes:

> "A power over a man's subsistence amounts to a power over his will." *Evans* v. *Gore,* 253 U. S. 245 (1920).

A legislature which has the power to levy a direct tax upon the press has the power not only to control it but to destroy it.

In the argument in the District Court appellant contended the Legislature has such power. She has renewed that contention here.

The Louisiana Legislature has no such power, and it is respectfully submitted this Court should so find.

(C) The Power to License the Press is the Power to Reguate It, or to Destroy It. Such Power Abridges the Constitutional Guaranties of a Free Press.

The mere thought of a licensed press is repugnant to our concept of the exercise of the functions of govern-

ment. Yet Section 1 of the Louisiana Act in controversy provides

> "that every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week . . . shall . . . pay a license tax for the privilege of engaging in such business in this State of two percent. (2%) of the gross receipts of such business."

Any attempt to license the press, whatever the nature or terms of the license may be, constitutes an abridgement of the right to have a free press.

(D) The Attempt by the Legislature to Levy a Tax Solely by Reference to the Volume of Circulation Abridges the Freedom of the Press.

It would seem this point needs no elaboration. The constitutional guaranty contains no reference to the size of a newspaper or the volume of business done by the press. It states that no law shall be passed abridging the freedom of the press. An attempt to tax the press over a certain size is a direct violation of this provision.

The record shows that circulation is but one of many factors affecting advertising. (R. 51, 52.) The volume of a newspaper's circulation certainly has but a remote bearing on its revenues from advertising, if any at all. (R. 51, 52.)

This is well illustrated in the footnote below giving various examples of two newspapers in each of several fields with their comparative circulations, advertising rates and advertising lineage for the year 1933.* R. 52.

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* Examples of circulation, advertising rates and advertising lineage:

	Circulation	Rate	Advertising Lineage for 1933
NEW YORK CITY			
"Herald Tribune"	317,697	72c	6,616,209
"American"	337,238	65c	6,426,347
WASHINGTON, D. C.			
"News"	67,083	18c	3,908,102
"Herald"	94,250	15c	3,502,775
MIAMI, FLORIDA			
"News"	22,200	11c	405,000
"Herald"	37,650	11c	557,714
DALLAS, TEXAS			
"Journal"	40,552	12c	4,771,227
"Dispatch"	40,674	10c	2,845,605
BALTIMORE, MD.			
"Sunday Sun"	177,283	50c	4,078,142
"Sunday American"	198,645	35c	2,979,280
BOSTON, MASS.			
"Transcript"	33,605	25c	3,697,022
"Post"	346,607	60c	5,485,109
DETROIT, MICHIGAN			
"Sunday News"	268,972	55c	3,037,032
"Sunday Times"	285,166	50c	2,635,545

Even were the law so phrased as to levy the tax by reference to the volume of advertising instead of the volume of circulation it would be invalid. As this Court has said:

> "The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions is manifest and substantial, . . . A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss, *or to so diminish the profit as to impede or discourage the conduct of commerce.*" (Italics supplied.) *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321 (1918).

As heretofore pointed out, appellant argued in the court below and has reiterated the contention here that one of the purposes of Act 23 was to discourage advertisers from

using newspapers having a circulation in excess of 20,000 per week and to encourage them in the use of the smaller newspapers. The rate of 2% was applied for this purpose. If that rate were insufficient to effect it, then a higher rate naturally would be enacted.

If the Legislature has the power to enact any rate for such a purpose,—the purpose being to impede and discourage the conduct of the business of papers having a circulation in excess of 20,000 per week,—then it has the power to enact whatsoever rate it finds necessary to accomplish that purpose.

A classification of newspapers by reference to the volume of circulation for tax purposes abridges the freedom of the press. The fact that appellant admits the purpose is to impede and discourage the business of newspapers having a circulation in excess of 20,000 per week serves to emphasize the restrictive effect of any tax levied upon the business itself.

(E) The Fact That These Appellees are Corporations Does Not Deprive Them of the Right to Resist an Attempt to Abridge the Freedom of the Press.

In the District Court, appellant argued that the First and Fourteenth Amendments, considered together, were for the benefit of natural persons and that corporations (artificial persons) could not avail themselves of rights thereunder to protect themselves against hostile action by a legislature, even though their business was printing and publishing newspapers, and such action would abridge the freedom of the press.

Appellant attempts to distinguish between persons and corporations in the application of the Fourteenth Amendment to the sacred fundamental rights guaranteed under the Bill of Rights. This Court, many years ago, held "that corporations are persons within the meaning of this (the Fourteenth) Amendment." *Home Insurance Com-*

pany of New York v. *The People of the State of New York,* 134 U. S. 594 (1890).

Reference to Act 23 shows that the Legislature made no attempt whatsoever in that statute to distinguish between natural and artificial persons. The Act applies to "every person, firm, association, or corporation, domestic or foreign, engaged in the business" in the State of Louisiana.

The corporate form of doing business was known at the time the First Amendment was ratified. It was known at the time the Constitution of Louisiana was adopted in 1921.

Newspaper publishers, whether natural or artificial persons, were not given this great right as a matter of personal right to the exclusion of others. Rather, they occupy the position of trustees of a right granted to all of the people. By reason of their peculiar position, it is their solemn duty to protect the press, at all hazards, against hostile action. They and only they can do so. *Massachusetts* v. *Mellon,* 262 U. S. 447 (1923).

This issue has been determined by this Court in *Pierce* v. *Society of Sisters, supra.*

IV.

This Court Has the Power to Ascertain the Nature and Effect of This Act, Irrespective of its Designation or Declared Purpose.

The declared purpose of Act 23 of 1934 is the raising of revenue for the State of Louisiana.

A further purpose alleged by the appellant herein at the hearing in the District Court was the diversion of advertising from the larger to the smaller newspapers of the State. (R. 76.)

The real and underlying purpose of the legislation, however, is to punish those newspapers opposed to the dominant political faction in the State (R. 43), and

serve notice on them of further reprisals in the event of continued opposition.

Courts universally determine the validity of legislation according to its real rather than according to its declared purpose, as the latter may be disclosed by wholly superficial language. It is settled that where the validity of an Act is questioned courts will brush aside pretense, subterfuge and chicanery and look through the form to the substance. They are not bound by recitals, but reach their judgment from an examination of the actual operation and effect of a statute. The result must be taken into consideration. *Near* v. *Minnesota, supra; Bailey* v. *Drexel Furniture Co.,* 259 U. S. 20 (1922).

Now what is the effect of this law?

As heretofore pointed out, it levies a two percent gross advertising tax on newspapers and periodicals having a circulation of more than 20,000 per week. Only 13 out of 163 newspapers in the State of Louisiana are affected by it. The entire group is represented by these appellees. Twelve of the thirteen were opposed to the dominant political faction responsible for the legislation. Both before and after the law was passed its punitive purpose was proclaimed by its sponsor. (R. 43.)

There are four newspapers in Louisiana with circulations barely under 20,000 per week. (R. 49.) These compete with newspapers in the proscribed class. There are 120 weekly newspapers in the State, none of which is affected by the law. (R. 50.) The only newspapers affected are daily newspapers. (R. 50.) Yet the classification is based on weekly circulation. Circulation has no fixed relation to advertising revenues. (R. 51, 52.)

There can be no conclusion other than that the real purpose and effect of this law is a punishment of the press opposed to the dominant political faction in the state.

Conclusion

It is respectfully submitted, on the basis of the authorities cited, and the reasoning herein contained, that the District Court, as a federal court and as a court of equity, had jurisdiction of this cause as to all of the plaintiffs; that the case presented called for the exercise of jurisdiction by a court of equity; and that Louisiana Act 23 of 1934 is unconstitutional in that it violates the license tax requirements of the State Constitution, the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, and the guarantee of a free press contained in both Constitutions.

Respectfully submitted,

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APPENDIX A

Statutes Involved

Act 23 at the Regular Session of the Louisiana Legislature (1934)

To provide additional revenue for the State of Louisiana by levying a license tax, in addition to all other licenses and taxes now levied and assessed in this State, upon every person, firm or corporation engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than twenty thousand copies per week, or displayed and exhibited, or to be displayed and exhibited, by means of moving pictures; to require reports of such business, in aid of the collection of such license tax, and to provide for such collection and for the adoption of regulations relative thereto; to fix penalties for violations of this Act or of any of said regulations; and to provide for the disposition of the proceeds of such license tax.

Section 1. Be it enacted by the Legislature of Louisiana, That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited, by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent. (2%) of the gross receipts of such business.

Section 2. That on the 1st day of October, 1934, for the period August 1, 1934, to September 30, 1934, inclu-

sive, and thereafter, on each first day of January, April, July and October, for the preceding quarter of the year, every person, firm, association or corporation, domestic or foreign, engaged in such business, or who has transacted any such business, shall file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for such business during the period covered by said report.

Section 3. The Supervisor of Public Accounts shall have authority to require reports sworn to cover any transaction during the same period, similar to those provided for in Section 2, of any person, firm, association or corporation who has paid for such advertising service.

Section 4. Every such person, firm, association or corporation who is required to submit a report, as provided in Section 2, shall accompany such report by a remittance to the Supervisor of Public Accounts, in lawful money of the United States, or by certified check, or by any other means as may be authorized by said Supervisor of Public Accounts, of the amount of the tax shown to be due by said report, or two per cent. (2%) of the gross amount of any such business done during the period covered by such report. The Supervisor of Public Accounts is authorized to audit and revise any report filed under this Act, and to assess additional taxes when and as shown to be due, notice of any such additional taxes to be given by mail to the taxpayer or person owing the tax; and any such taxpayer shall have the right to contest any such assessment in the District Court of the Parish of East Baton Rouge. Provided, that the burden of proving any claim made as to any such report shall be upon the plaintiff.

Section 5. In cases where it is established to the satisfaction of the Supervisor of Public Accounts that a payment or payments have been made under this Act that were not due and collectible, the Supervisor of Public Accounts is authorized to refund such payments out of

any funds on hand, collected by virtue of this Act, and not remitted to the State Treasurer according to law.

Section 6. The Supervisor of Public Accounts is authorized to adopt, and publish in the official journal of the State, reasonable rules and regulations for the purpose of efficiently carrying out the purposes of this Act.

Section 7. All taxes levied by this Act are due on the day following the last day of the quarter year, as to the business or transactions done or had during such quarter year, and shall become delinquent on the thirtieth day following the last day of the quarter in which such business was transacted; and such delinquent taxes shall bear interest at the rate of one per cent. (1%) per month from their due date, until paid.

Section 8. In case it becomes necessary to enforce payment of any tax due under this Act, the Supervisor of Public Accounts may institute suit, in any court of competent jurisdiction, for the amount of the tax and interest, and may also include in such suit a demand for a penalty of 25% of the amount of the tax and interest, as attorney's fees, which said penalty is hereby imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered; execution of which judgment, shall take place as provided by existing laws.

Section 9. It shall be unlawful for any person, firm, association or corporation, required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof, or any managing agent or officer of any such firm, association or corporation

(1) To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

(2) To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation.

The venue of prosecutions and suits under this Act shall be the parish where the report was made or the tax computed by the taxpayer, or the parish where the business was transacted, or payment therefor received; but as to corporations not maintaining their records in this State, all such proceedings shall be brought at the domicile of their agents for service.

Section 10. For the purpose of enforcing the collection of the tax levied by this Act, the Supervisor of Public Accounts is hereby specifically authorized and empowered to examine, at all reasonable hours, the books, records and other documents of all persons, firms, associations or corporations who have transacted any of the business described in Section 1 hereof, or who are liable for any tax under this Act, or as to the business of whom there is levied the tax provided by this Act, in order to determine and provide for a correct check and ascertainment of the true amount due. In the event that any person, firm, association or corporation, or the employee, agent or officer of said firm, association or corporation, shall refuse to permit such examination of such books, records and other documents by the Supervisor of Public Accounts, as aforesaid, said officer may proceed by rule, in chambers or in open court, in or out of term time, in any court of competent jurisdiction, in the parish where such refusal occurred, and require said person, firm, association or corporation, or employee, agent or officer of said firm, association, or corporation to show cause why

the Supervisor of Public Accounts should not be permitted to examine said books, records, or documents; and in case said rule be made absolute, the same shall be considered a judgment of the court and every violation thereof deemed a contempt of the court, to be punished according to law.

Section 11. The Supervisor of Public Accounts shall make remittance to the State Treasurer, not later than the 30th day after the last day of the preceding quarter, of all taxes, interest and penalties collected by him during the said quarter, and the Treasurer shall place the same to the credit of the Property Tax Relief Fund, to be disbursed and disposed of as provided in the Act creating such fund. Provided that the sum of Two Thousand Dollars ($2,000.00) per month of such collections may be withheld by the Supervisor of Public Accounts for the expense of enforcing this Act.

Section 12. Should the collection of State taxes be transferred by the Legislature from the Supervisor of Public Accounts to any other office, board, commission, officer, or official in whom is vested the collection of the taxes herein levied, said new collector shall have all the authority vested in the Supervisor of Public Accounts by this Act, and the title of such officer, board, commission, office or official shall be substituted for "Supervisor of Public Accounts", where the same appears in any provision of this Act.

Section 13. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of said Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Official Edition Acts of Louisiana for 1934—176.)

Paragraph 1 of Section 24 of the Judicial Code, as amended, provides in part as follows:

> "The District Courts (of the United States) shall have original jurisdiction:

"Of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States . . . and then the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraph paragraph of this Section."

Paragraph 14 of Section 24 of the Judicial Code, as amended, provides that the District Courts (of the United States) shall have original jurisdiction:

"Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Section 266 of the Judicial Code, as amended, reads as follows:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge and the other two may be either circuit or dis-

trict judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid . The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit

in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

Constitutional Provisions Involved

Section 8 of Article X of the Constitution of Louisiana, 1921:

> "License taxes may be levied on such classes of persons, associations of persons and corporations, pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, except clerks, laborers, ministers of religion, school teachers, graduated trained nurses, those engaged in mechanical, agricultural or horticultural pursuits, or in operating sawmills. Such license taxes may be classified, graduated or progressive."

Section 3 of Article I of the Constitution of Louisiana:

> "No law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Section 1 of the Fourteenth Amendment of the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The First Amendment of the Constitution of the United States:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

APPENDIX B

Volumes have been written on the fight for a free press, which has been waged ever since the art of printing was invented. In a brief such as this it would be impossible to do more than make general references to these works. However, some references are essential.

Liberty without the right of free speech and the right to have a free press was inconceivable to our forefathers.

In 1787, in order to form a more perfect union and "secure the Blessings of Liberty to ourselves and our Posterity", the delegates to the Constitutional Convention submitted to the American people with a recommendation for its ratification the Constitution of the United States. In April, 1789, it was ratified, after prolonged debate and discussion, during which the sponsors of the Constitution had agreed to submit to the first session of Congress convening under the Constitution a Bill of Rights for inclusion therein. The Bill of Rights—the original ten amendments—was ratified in 1791.

The very first of these Amendments prohibits Congress from passing any law abridging freedom of speech or a free press. The debates over ratification of the Constitution, followed as they were by the ratification of the First Amendment, demonstrate that it was impossible for the overwhelming majority of the people to conceive of liberty as guaranteed by the Constitution which did not embrace the right of free speech and the right to have a free press. As Mr. Madison said, the press had exerted a freedom in canvassing the merits and measures of public men of every description not confined to the limits of the common law. *Near* v. *Minnesota, supra.*

From a time before the adoption of the Constitution, even before the war for independence, a free press has been almost universally regarded as a safeguard of our institutions.

There can be no doubt that the First Amendment of the Constitution of the United States and its counterparts in

the various state constitutions were adopted to prohibit all governmental restraints on freedom of expression, of whatever nature or description.

At the time of the revolution as at the time of the ratification of the First Amendment, newspapers suffered from three specific forms of taxation, all initiated during the reign of Queen Anne:

a) The advertisement duty;
b) The stamp tax on circulation; and
c) The tax on paper.

In addition, the English law called for bonds as "security for good behaviour" from all publishers of newspapers.

J. B. Williams, in his "History of English Journalism" (1908), deals extensively with these forms of repression and suppression.

The advertisement duty was not repealed until 1853; the stamp duty not until 1855; the paper duty not until 1861; and the act requiring security for good behaviour not until 1869,—or a year after the ratification of our Fourteenth Amendment, which secured the liberties of the Bill of Rights against hostile action by state legislatures as well as by Congress.

The following paragraphs are enlightening on this question of taxation of the press:

> "In 1712 the War of the Spanish Succession was still dragging on, and the Treasury, like Queen Anne's privy purse, was empty. These facts gave the Commons of Great Britain the idea of killing two birds with one stone: so the libels and blasphemies of the Press were to be suppressed by a tax which would at the same time keep the newspapers in hand and help in the necessary purpose of raising 'large supplies of money to carry on the present war until your Majesty be enabled to establish a good and lasting peace, and for defraying your Majesty's other extraordinary expenses.' The measure which was designed to effect these purposes is 10 Anne, cap. 19 (1712),

and it is entitled 'An Act for levying several duties upon all sope and papers made in Great Britain or imported into the same . . . and upon several kinds of stampt vellum, parchment, and paper, and upon certain printing papers, pamphlets, and advertisements; for raising the sum of eighteen thousand pounds by way of lottery,' etc.

"This Act hit the printer and publisher of a newspaper a triple blow; it imposed a duty on paper to be levied for thirty-two years (it was made perpetual five years later); it placed another duty, to be collected by means of stamps, upon pamphlets, and upon 'all newspapers or papers containing public news, intelligence, or occurrences,' printed in Great Britain to be dispersed and made public; and it laid a charge by way of duty upon every advertisement to be contained in the *London Gazette* or any other printed paper, such paper being dispersed or made public weekly or oftener. Addison, in the *Spectator* of 31st July, 1712, the day before the Act came into operation, was oppressed by dismal forebodings. Swift, both before the passing of the Act and after a year's experience of its operation, was decidedly hostile.

"Through the century following its enactment, printers sought constantly to evade the working of this measure, whose structure was changed from time to time, in order to meet evasions and to tighten still more closely the bonds in which the authorities held the pestiferous Press. One way in which this object was sought was by the revision of the definition of a newspaper. The original definition of the Act of Anne was amended by 60 George III. (1820), cap. 9, to read: 'Pamphlets or papers containing public news, intelligence, or occurrences, *or any remarks or observations thereon, or upon any matter in Church or State.*' Finally, by 6 and 7 William IV. (1836), the duty was imposed upon every paper printed in Great Britain weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements, and containing any public news, intelligence, or occurrences. Such details as the area of the printed matter were taken into consideration in fixing the rate of duty, which was as high as 4½d. per

copy at one time, while the advertisement duty for long stood at the almost prohibitive figure of 3s. 6d. for each advertisement. But the most galling restriction of all was that imposed by section 89 of the Act of 1820, enacting that no person should 'print or publish for sale any newspaper or any pamphlet or other paper containing any public news . . . which shall not exceed two sheets, or which shall be published for sale at a less price than sixpence until he shall have entered into a recognisance . . . himself in £300 if the paper be published in or within twenty miles of London, and £200 if published elsewhere in the United Kingdom, with two sureties in a like sum . . . to meet the fine,' or penalty in case the publisher should be convicted of printing or publishing 'any blasphemous or seditious libel,'—that being recognized as the main occupation of news-mongers in those days. This came to be described by the reformers as the burden of Security.

"These were the onerous burdens and some of the oppressive circumscriptions under which the Press in Great Britain laboured. . ." (Stewart, William-John Lennox and the Taxes on Knowledge, Glasgow, 1918.)

A TAX ON ADVERTISING WAS ONE OF THE SPECIFIC EVILS SOUGHT TO BE BARRED FOREVER BY THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION

Erskine May in his *"Constitutional History of England"* (Vol. II, pp. 239 et seq.), traces the development of censorship from its origin with the establishment of the first printing press in England in 1476, through the Licensing Acts and Star Chamber proceedings in the reigns of Elizabeth, the Stuarts, Anne and George III, and the French and American Revolutions, until the final vindication of the principle of absolute freedom of expression, from both executive and legislative restraints, in the reign of Queen Victoria.

With particular reference to restraints on the freedom of the press by taxation, May wrote:

"So strong was the feeling against the press, that proposals were even made for reviving the Licensing

> Act. It was too late to resort to such a policy: but a new restraint was devised in the form of a stamp duty on newspapers and *advertisements*—avowedly for the purpose of repressing libels. This policy, being found effectual in limiting the circulation of cheap papers, was improved upon in the two following reigns . . . ."

May then tells the history of the oppressive libel laws which followed the abolition of the licensing acts in 1694; of the birth of the pernicious doctrine that "the greater the truth, the greater the libel"; the famous trials of John Wilkes, of Cobbett and of others for their "libels on government"; and, finally, when the "temper of the people" would bear no longer "a harsh execution of the libel laws," of the dawn of a new day for liberty of the press:

> "Nothing was now wanting to its full expansion, but a revision of the fiscal laws, by which its utmost development was restrained. These were the stamp, *advertisement,* and paper duties. It was not until after a struggle of thirty years, that all these duties were repealed: but in order to complete our survey of the press, their history may, at once, be briefly told.
>
> "The newspaper stamps of Queen Anne (10 Anne, Ch. 19, Secs. 101, 118) had risen, by successive additions, to fourpence. *Originating in jealousy of the press,* its extension was due partly to the same policy, and partly to the exigencies of finance. So high a tax, while it discouraged cheap newspapers, was naturally liable to evasion. Tracts, and other unstamped papers containing news and comments upon public affairs, were widely circulated among the poor; and it was to restrain this practice, that the stamp laws had been extended to that class of papers by one of the Six Acts. They were denounced as seditious and blasphemous, and were to be extinguished. But the passion for news and political discussion was not to be repressed; and unstamped publications were more rife than ever. Such papers occupied the same place in the periodical press, as tracts printed, at a former period, in evasion of the licenser. All con-

cerned in such papers were violating the law, and braving its terrors: the goal was ever before their eyes. This was no honourable calling; and none but the meanest would engage in it. Hence the poor, who most needed wholesome instruction, received the very worst, from a contraband press. During the Reform agitation, a new class of publishers, of higher character and purpose, set up unstamped newspapers for the working classes, and defied the government in the spirit of Prynne and Lilburne. Their sentiments, already democratic, were further embittered by their hard wrestling with the law. They suffered imprisonment, but their papers continued in large circulation; they were fined, but their fines were paid by subscription. Prosecutions against publishers and vendors of such papers were becoming a serious aggravation of the criminal law. Prisons were filled with offenders; and the state was again at war with the press, in a new form.

"If the law could not overcome the unstamped press, it was clear that the law itself must give way. Mr. Bulwer-Lytton and Mr. Hume exposed the growing evils of the newspaper stamp; ministers were too painfully sensible of its embarrassments; and in 1836, it was reduced to one penny, and the unstamped press was put down. At the same time, a portion of the paper duty was remitted. Already, in 1833, the *advertisement duty* had been reduced; and newspapers now laboured under a lighter weight.

"Meanwhile, efforts had been made to provide an antidote for the poison circulated in the lowest of the unstamped papers, by a cheap and popular literature without news: but the progress of this beneficent work disclosed the pressure of the paper duty upon all cheap publications, the cost of which was to be repaid by extensive circulation. Cheapness and expansion were evidently becoming the characteristics of the periodical press; *to which every tax, however light, was an impediment.* Hence, a new movement for the repeal of all 'taxes on knowledge,' led by Mr. Milner-Gibson, with admirable ability, address, and persistence. In 1853, the advertisement duty was swept away; and in 1855, the last penny of the newspaper stamp was relinquished." (Emphasis supplied.)

The first tax on advertising was levied by the statute of Anne. (10 Anne, C. 19, Secs. 101, 119). As will be noted from the discussion by *May, supra,* and from the historical data contained in the following pages, this tax was considered, even then, as a restraint on the liberty of the press. This is particularly interesting because the statute levied taxes, in addition to those on newspapers and advertising, on various commodities. The effect of such a tax, as an abridgment of the freedom of the press, was not considered as having been altered by coupling it with taxes on others than newspaper publishers.

One of the later English newspaper tax statutes—for there were several over the period from 1712 to 1861—expressly declared that its purpose was to restrain the press. The Act (60 Geo. III, c. 9) was called the "Publications Act or Act to Subject Certain Publications to the Duties upon Newspapers and to make Other Regulations for Restraining the Abuses arising from the Publication of Blasphemous Seditious Libels". In its preamble, the Act declared that:

> "Pamphlets and printed papers containing observations upon public events and occurrences, tending to excite hatred and contempt of the Government and constitutions of these realms as by law established, and also vilifying our holy religion, have lately been published in great numbers and at very small prices: and it is expedient that the same should be restrained."

And with this preamble, the statute went on to effect the restraint through the simple device of a tax! See *Wickwar, "The Struggle for the Freedom of the Press"*, London, 1928, p. 118; *Collet, "History of the Taxes on Knowledge"*, London, 1899, p. 17.

Collet tells of the formation of societies "For the Repeal of Taxes on Intelligence"; he quotes from the speeches in Parliament of Bulwer-Lytton, of Milner-Gibson, of Gladstone and of others, pointing to the freedom of the American Press; of the unrelenting battle waged

on many fronts from 1830 to 1861 for discontinuance of the stamp and advertisement duties; and of the universal joy of the people in the final achievement of freedom of the press in England, when these taxes were at last abolished.

All writers on the subject give the date of the repeal of the English newspaper taxes, as the date on which liberty of the press in England had its birth. This history of infringement of British freedom of the press cannot, however, be appreciated fully without a reading of *Collet Dobson Collet's "History of the Taxes on Knowledge—Their Origin and Repeal"*, published in two volumes in London in 1899. It tells the story of the "Taxes on Knowledge" —and the name by which they were known is the most telling evidence of their effect—as an interesting narrative whose reader cannot help but reach the conclusion that any tax on the press is necessarily an abridgment of its freedom.

Another English writer on the subject, sums up the story in a paragraph:

> "Though the doctrine as to a license of the Crown being necessary in order to publish a newspaper was never thoroughly settled, and soon was abandoned, there were other exceptional laws from time to time passed with respect to these periodicals . . . One of the first definite restrictions put upon newspapers was the Stamp Act of 10 Anne, c. 19, in 1711 (1712). The duty was increased in 1820, and so continued till 1855, when it was abolished . . . An advertisement duty was also imposed in 1711 (1712), and repealed in 1853 . . . All the restrictions on the publishing of newspapers caused by stamp duties, advertisement duties (etc.) being thus swept away . . . There is no court or functionary which has any power whatever to suppress, with or without reason, any newspaper . . ."
>
> *James Paterson, The Liberty of the Press,* London, 1880, pp. 56-58.

Debates in Parliament

Perhaps the most intelligent concept of the purpose and effect of the British newspaper taxes can be gleaned from the debates in Parliament at the time of their repeal. It must be borne in mind that the successful agitation in the United States for inclusion of a freedom-of-the-press clause in the Federal Constitution, was based almost exclusively on the fear that the press of America would be subjected, in the absence of such a clause, to restraint through taxation, as was then the case in England. The following excerpts are taken from Hansard's "Parliamentary Debates", where some of the speeches are given in condensed form and in the third person.

The background of the "taxes on knowledge" was given quite simply and succinctly by *Mr. Milner-Gibson,* who led the movement for their repeal, in a speech in the House of Commons on June 21, 1858:

> "The paper duty arose in the time of Anne, just after newspapers began to be party organs, to reflect on the Ministers of that time and to defend the party leaders who were then occupying the attention of the country. Mr. Hallam said, that the vivacity of the press attracted the attention of the Ministers of that day. A message was brought down, which was now upon the journals of the House, informing the House that the press was too free, that it reflected with too much freedom upon the Ministers of the day and upon the institutions of the country, and calling upon the House to take some steps to put down that great evil. The House in reply to his message, said that they would endeavour to find out a remedy adequate to the mischief. And what was the remedy? Why in a Committee of Ways and Means it was for the first time suggested that heavy taxation upon the press might have all the effect which a censorship or actual licensing of the press had in other countries, and for the first time taxes on knowledge were invented in a Committee of Ways and Means for the express and avowed purpose of restraining cheap periodicals in

this country. The newspaper stamp was one tax and the advertisement duty another."

Hansard, "Parliamentary Debates", 21 and 22 Victoria, Vol. 151, p. 102.

The foregoing remarks were made in support of a resolution putting the House of Commons on record as favoring repeal of the paper duty. *Mr. Disraeli* expressed no objection to the resolution as passed (p. 135). A summary of the origin of these taxes, almost identical to that by Mr. Milner-Gibson, quoted above, was given on May 24, 1855, in the House of Lords by *Viscount Canning,* on the second reading of the bill to repeal the newspaper stamp. *Hansard,* 18 Victoria, Vol. 138, p. 953.

So far was the real purpose of these taxes taken for granted, that even those who were opposed to their repeal based their opposition primarily on the ground *that such a restraint on the freedom of the British press was still needed!* Thus, *Mr. Bentinck,* in closing the debate on the bill to repeal the newspaper tax in the House of Commons on May 11, 1855, said:

"No advocate of the character of the press of this country could support this measure. He had never yet heard it argued that the press, able and enlightened as it was, was not in want of some check and safeguard against the ebullitions of party and personal feeling. Nothing could be more injurious to the character of the press, or of the public whom it served, than to take away the restrictions which had prevented not the liberty, but the license of the press, and the want of which would cause the country to be inundated with publications that would not only lead to the destruction of the character of the press, but would be attended by the most mischievous results in all large and populous communities."

Hansard, "Parliamentary Debates", 18 Victoria, Vol. 138, p. 450.

On May 6, 1861, *Mr. Baines,* speaking in the House of Commons for the repeal of the paper duty, summed up the prevailing sentiment in the few following words:

> "These taxes on knowledge ought never to have existed at all. They were altogether bad, and were originally intended to prevent political discussion and the spread of news."
>
> *Hansard, "Parliamentary Debates",* 24 Victoria, Vol. 162, p. 1593.

On May 21, 1860, on the second reading of the earlier bill for repeal of the paper duty in the House of Lords, *Earl Granville,* President of the Council, spoke as follows in support of the bill:

> "My Lords, I rise to move the second reading of a bill the object of which is to repeal a tax which has now existed for nearly 150 years. That tax, as stated in the Preamble of the first Act, was imposed for the purpose of enabling Her Majesty, Queen Anne, to carry on the war then raging, and it was to continue until she secured a lasting peace. Contemporary writers, however, inform us that the real object of the bill was, in conjunction with other taxes that were levied at the same time, to impose restrictions on the press, which was at that time thought too licentious."
>
> *Hansard, "Parliamentary Debates",* 23 Victoria, Vol. 158, p. 1439.

Lord Monteagle opposed the bill, and he was answered in a speech to the same effect as that of Earl Granville, an excerpt from which is quoted above, by the *Marquess of Clanricarde* id. p. 1495.

What is undoubtedly the most masterful legal presentation of the case for the repeal of these taxes was that of *Sir Edward Bulwer-Lytton* on second reading of the bill to repeal the newspaper stamp in the House of Commons on March 26, 1855. After stating that he "was the first person who ever introduced into this House a motion for the repeal of the taxes on knowledge . . . more than twenty

years ago", he proceeded, in answer to the contention that the matter of revenue was involved:

> "I cannot consent to allow the grand principle involved in this bill to be dwarfed down to the level of a budget . . . The principle is this—that you ought not in a free country to lay a tax on the expression of political opinion—a tax on the diffusion of that information on public affairs which the spirit of our constitution makes the interest and concern of every subject in the State."
>
> *Hansard, "Parliamentary Debates"*, 18 Victoria, Vol. 137, p. 1120.
>
> "Sir, the question really is between the tax collector and the public, and it is this—whether it is not time that we should enforce the great principle of the constitution of civil liberty and of common sense which says that opinion shall go free, not stinted nor filched away by fiscal arrangements, but subject always to the laws of the country against treason, blasphemy and slander."
>
> id. p. 1123.
>
> "It is superfluous to argue the principle that opinion should not be indirectly suppressed by a tax, when the boldest man among us dare not invade it by an open law; and, indeed, if we desired to do so, we have no longer the power."
>
> id. p. 1124.

The foregoing excerpts from the argument of Sir Bulwer-Lytton illustrate, admirably, the development of the English constitution in comparison to the express written provisions of our own. The repeal of the British newspaper taxes on the ground that Parliament "no longer had the power" thus to restrain the press, put into the constitution of England the same immunity against abridgment of freedom of the press, as was written into the Constitution of the United States by the First Amendment.

The bill for the repeal of the taxes on advertising passed the House of Lords without debate; but the debates

in the House of Commons on the advertisement tax are by no means lacking in sentiments similar to those expressed as to the other "taxes on knowledge". *Mr. Cobden,* on July 1, 1853, in the House of Commons, said:

> "It is a question of a tax upon knowledge; because if you want to have newspapers at all in this country, they can only be supported by funds furnished by advertisements."
>
> *Hansard, "Parliamentary Debates",* 16 Victoria, Vol. 128, p. 1108.

On the same date, in speaking for its repeal, *Mr. Milner-Gibson* characterized the advertising tax as being

> ". . . in short, an indirect and most effectual mode of crippling and restraining the press, and of injuring its independence. . ."
>
> id. p. 1096.

No clearer light can be shed on the inevitable effect of a tax on newspaper advertising than the comment twice found in the debates on the bill to repeal the English duty on advertisements in 1853. On the same date (July 1) on which the discussion recorded above took place, a statement by *Mr. Bright* is recorded (p. 1115) to the effect that "literally and virtually Mr. Timms (Solicitor to the Board of Inland Revenue) and his confederates at Somerset House charged with collection of the advertising tax were elevated into censors of the press" and acted accordingly.

Some months prior to the date of the foregoing discussion, on the introduction in the House of Commons by Mr. Milner-Gibson, on April 14, 1853, of a resolution "That the advertisement duty ought to be repealed", *Mr. J. L. Ricardo* is recorded as having stated that,

> "It had been said that the censorship of the press had expired sixty years ago: but he believed that Mr. Timms, the Solicitor to the Board of Inland Revenue (chief law officer in the collection of taxes) was in fact the real censor of the British press."

Hansard, "Parliamentary Debates", 16 Victoria, Vol. 125, p. 1168.

England has not been alone in using the device of taxation to restrain the press. After stating that "the English press may be said to date its complete freedom" from the time of the repeal of the various newspaper taxes, the *Encyclopaedia Britannica* (Vol. XXII, p. 300 et. seq.) gives the history of freedom of the press in other countries. It states that liberty of the press was completely re-established in France with the republic and the repeal of the newspaper taxes in 1870, and in Austria by the repeal of the *Kautionszwang* (caution money) in 1894 and the government newspaper stamp in 1899.

The newspaper stamp tax existed in Colonial Massachusetts but was repealed in 1785 as a result of agitation for a removal of this restriction on a free press. Strangely enough, it was followed by a tax (under the Bowdoin administration) on newspaper advertising, the fate of which is briefly and succinctly told by *Duniway* in his *"Development of Freedom of the Press in Massachusetts"*, p. 132:

> "At the same time, however, to make good the deficiency in the State's income, an advertisement tax was levied. Again the printers complained loudly of this restriction upon their business, alleging that it was an unconstitutional hindrance to that free development of the press which was essential to general diffusion of political information. Agitation against the obnoxious tax continued until its repeal was secured in 1788, after a House Committee had reported that the burden upon the printers was not compensated for by the small annual return of about £250 from the tax."

This tax on advertising in Massachusetts was set up as one of the reasons for the adoption of a freedom-of-the-press clause in the Constitution of the United States. (*Vide post.*)

Adoption of First Amendment

When the original Federal Constitution was adopted by the Convention in Philadelphia in September, 1787, it contained no bill of rights, and so strong was the feeling throughout the country against the new constitution unless a bill of rights were made a part thereof, that it never would have been ratified by the requisite number of states, had it not been for the promise that adoption of such a bill of rights, in the form of amendments to the constitution, would be made the first order of business of the new Congress, with early submission of the proposed new amendments to the states for ratification. This promise was kept, and on September 25, 1789, even before all the states had ratified the constitution itself, Congress adopted amendments containing a bill of rights, and these were in due course ratified by the states. To all practical intents and purposes, therefore, the first ten amendments to the Constitution of the United States may be considered a part of the original document. *Stevens, Sources of the Constitution of the United States* (1894), p. 213; Charles Warren, The Making of the Constitution (1928), pp. 509-510.

A freedom-of-the-press provision was proposed in the Philadelphia convention by Messrs. Elbridge Gerry and Charles Pinckney, but was defeated by a vote of 6 states to 5. Neither the journal of the Convention nor Madison's notes thereof, however, contain the debates on this provision, and while the matter was one of considerable discussion in the sessions of the state conventions called to ratify the new constitution, the meager available records of those sessions, contained in *"Elliot's Debates"*, also unfortunately fail to give the arguments. According to the Congressional Journal, the clause was adopted by Congress in the First Amendment to the Constitution practically as a matter of course, and without debate, and the journals of the legislatures of the several states show that this amendment was ratified by each in the same way.

The debates on the freedom-of-the-press clause in the Constitution of the United States, therefore, are to be found only in the recorded speeches and contemporaneous writings during the very active campaign for ratification of the original Constitution by the state conventions, when the Federalists, among whose leaders were Hamilton, Jay and Wilson, advocated its ratification as it stood, and the Republicans led by Jefferson, Lee and Smith, demanded a bill of rights as a condition precedent to ratification. All of the discussion was of course not recorded, and is accordingly unfortunately not available.

There can be no question, however, but that in the discussion, the demand for a freedom-of-the-press clause in the Constitution, was repeatedly, earnestly and forcefully urged, on the primary ground that its absence left the press open to restraint of its freedom through taxation. The Federalists argued that since Congress had no right to legislate on subjects not delegated to it for that purpose, and since it had accordingly no right to regulate the press, there was no need for such a protective clause in the Constitution. The Republicans simply answered that both the direct and implied powers of Congress were very broad, among those rights being an almost unlimited power of taxation, through which, as the history of England amply proved, the freedom of the press could be as effectively abridged as through censorship or licensing legislation.

It must be borne in mind, of course, that the argument of the Republicans prevailed, and the freedom-of-the-press clause was incorporated in the Constitution pursuant to their demand made for the primary purpose of prohibiting infringement of freedom of the press through taxation.

Among the outstanding figures in the Revolutionary period was *Richard Henry Lee* of Virginia, delegate from that State to the first Continental Congress convened at Philadelphia in 1774, where he introduced the resolution which he had drafted

"That these United Colonies are, and of Right ought to be Free and Independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved."

When, later, the *Declaration of Independence* was to be framed, and Lee, on account of illness had to return to Virginia, Thomas Jefferson took his place, and the foregoing language of Lee's resolution was embodied verbatim in that memorable document. Lee returned to Philadelphia in time to sign the Declaration.

Lee was appointed a member of the convention to frame a new federal constitution in 1787, but declined to serve. Thereafter, however, he took an active part in the discussion on ratification, maintaining staunchly with Jefferson the requirement for a bill of rights as a condition of ratification, as set out in the *Virginia and Kentucky Resolutions.* Lee's arguments are found in his *"Letters of a Federal Farmer",* and one of these contains his statement that the absence of a freedom-of-the-press provision in the new Constitution, left the people subject to abridgment of the liberty of their press through taxation:

"I confess I do not see in what cases the Congress can, with any pretence of right, make a law to suppress the freedom of the press; though I am not clear, that Congress is restrained from laying any duties whatever on printing, and from laying duties particularly heavy on certain pieces printed, and perhaps Congress may require large bonds for the payment of these duties. Should the printer say, the freedom of the press was secured by the constitution of the state in which he lived, Congress might, and perhaps with great propriety, answer, that the federal constitution is the only compact existing between them and the people. . ."

"Observations leading to a fair examination of the system of government, proposed by the late convention; and to several essential necessary alterations of it. In a number of Letters from the Fed-

eral Farmer to the Republican (N. Y.) Printed (by Thomas Greenleaf) in the year MDCCLXXXVIII, 8 vo—pp 40.

"Written by Richard Henry Lee, who was appointed a member of the Philadelphia Convention, but declined to serve."

Ford, Paul Leicester, "Pamphlets on the Constitution of the United States, published during its discussion by the people, 1787-1788", Brooklyn, 1888, p. 316.

Letters and pamphlets on the new Constitution of course abounded at the time it was before the several states for ratification. Among those having a wide circulation at the time, were the *"Letters of Centinel"*, believed to have been written by Samuel Bryan. In one of these the foregoing statement by Richard Henry Lee, received express endorsement. *Letters of Centinel, II, Pennsylvania and the Federal Constitution, Ed. by McMaster and Stone,* Philadelphia, 1888, p. 581.

Stevens, in his *"Sources of the Constitution of the United States"* (p. 218, 221), traces the origin of the demand for the freedom of the press clauses in the American constitutions to the laws and usages of England, and demonstrates the correctness of his statement by showing that the debates in Pennsylvania with reference to a freedom of the press clause in the Constitution of that State, just prior to the adoption of the First Amendment to the Constitution of the United States, pointed specifically to the English abuses.

In the light of the foregoing, the speeches in the controversy over the ratification of the Federal Constitution in Pennsylvania assume considerable importance in the instant discussion. The argument of the Federalists is summed up in an address delivered at Philadelphia on October 6, 1787, by *James Wilson,* who had been a delegate from Pennsylvania to the National Constitutional Convention:

"When the people established the powers of legislation under their separate governments, they in-

vested their representatives with every right and authority which they did not in explicit terms reserve . . . But in delegating foederal powers, another criterion was necessarily introduced and the congressional authority is to be collected, not from tacit implication, but from the positive grant, expressed in the instrument of union . . . This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights, a defect in the proposed constitution: . . . For instance the liberty of the press, which has been a copious subject of declamation and opposition: what controul can proceed from the foederal government, to shackle or destroy that sacred pal'adium of nation freedom? If, indeed, a power similar to that which has been granted for the regulation of commerce, had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the import should be general in its operation."

Ford, Paul Leicester, "Pamphlets on the Constitution of the United States, published during its discussion by the people, 1787-1788", Brooklyn, 1888, p. 156.

Prompt answer was made to Wilson, in an address at Philadelphia on November 3, 1787, by *Eleazar Oswald,* Revolutionary patriot and Lieutenant Colonel of the Continental Army:

"To the Citizens of Philadelphia:

"The important day is drawing near when you are to elect delegates to represent you in a convention, on the result of whose deliberations will depend in a great measure your future happiness.

"This convention is to determine whether or not the commonwealth of Pennsylvania shall adopt the plan of government proposed by the late convention of delegates from the different states which sat in this city . . .

"The objections that have been made to the new constitution are these: . . .

"The Liberty of the Press is not secured, and the

powers of Congress are fully adequate to its destruction, as they are to have the trial of libels, or pretended libels against the United States, and may by a cursed abominable Stamp Act (as the Bowdoin administration has done in Massachusetts) preclude you effectually from all means of information. Mr. W—— has given no answer to these arguments."

Address made at Philadelphia, Nov. 3, 1787, by "An officer of the Late Continental Army", reprinted in the "Independent Gazeteer", Nov. 6, 1787.

Pennsylvania and the Federal Constitution, Ed. by J. B. McMaster and F. D. Stone, Phila. 1888, p. 180, 181.

In the controversy in New York, the spokesman of the Federalists was *John Jay,* who had been a delegate to the Philadelphia convention. Jay published a pamphlet containing an argument almost identical to that made by James Wilson in Pennsylvania. Among the leaders of the Republicans in New York was *Melancthon Smith,* delegate from that State to the Continental Congress and the Constitutional Convention.

Smith had prepared a pamphlet on the proposed constitution, and when Jay's pamphlet appeared, Smith added a postscript to his own, for the specific purpose of challenging Jay's position on the freedom of the press, and of demonstrating that the absence of a constitutional provision guaranteeing this fundamental right to the people, left Congress free to abridge it through taxation:

"Since the foregoing pages have been put to the press, a pamphlet has appeared, entitled, 'An address to the people of the State of New York, on the subject of the new constitution, etc.'. . .

"'We are told (says the author), among other strange things, that the liberty of the press is left insecure by the proposed constitution . . . It is absurd to construe the silence of this, or of our own constitution relative to a great number of our rights into a total extinction of them; silence and a blank paper neither grant nor take away anything.'

"It may be a strange thing to this author to hear the people of America anxious for the preservation of their rights, but those who understand the true principles of liberty, are no strangers to their importance. The man who supposes the constitution, in any part of it, is like a blank piece of paper, has very erroneous ideas of it. He may be assured every clause has a meaning, and many of them such extensive meaning, as would take a volume to unfold. The suggestion that the liberty of the press is secure, because it is not in express words spoken of in the constitution . . . is puerile and unworthy of a man who pretends to reason. We contend, that by the indefinite powers granted to the federal government, the liberty of the press may be restricted by duties, etc., and therefore the constitution ought to have stipulated for its freedom . . ."

Postscript to

"An address to the people of the State of New York: showing the necessity of making amendments to the Constitution proposed for the United States, previous to its adoption. By a Plebeian. Printed in the State of New York; MDCCLXXXVIII, 8 vo —pp 26."

"Written by Melancthon Smith of New York, a member of the Continental Congress (1785-88), and of the New York State Convention, in which he opposed, but ultimately voted for the ratification of the new Constitution."

Ford, Paul Leicester, "Pamphlets on the Constitution of the United States, published during its discussion by the people, 1787-1788", Brooklyn, 1888, p. 87.

While the Continental Congress was in session, and before it proclaimed the Declaration of Independence, it recommended that each of the Colonies call a convention for the purpose of framing a state constitution. Such conventions were called in many of the Colonies and it is significant that in the State of Virginia, the Constitution which was adopted on June 29, 1776, or five days before

the proclamation of the Declaration of Independence, contained a provision

> "That the freedom of the press is one of the great bulwarks of liberty and can never be restrained but by despotic governments."

New Hampshire, Massachusetts, Pennsylvania, Maryland, North Carolina, South Carolina and Georgia all included provisions protecting a free press in their Constitutions which were ratified prior to the ratification of the Constitution of the United States. And following the ratification of the Constitution of the United States, all of the remaining thirteen Colonies adopted provisions to the same end.

Modern authority to the effect that the freedom-of-the press provision of the Federal Constitution was intended by its framers to prohibit taxation of the press as such is not lacking. In his work on *"Freedom of Speech,"* Professor *Zechariah Chafee* of the Harvard Law School, says:

> "It (The First Amendment) was formed out of past resentment against the royal control of the press under the Tudors, against the Star Chamber and the pillory, against the Parliamentary censorship which Milton condemned in his "Areopagitica", *by recollections of heavy newspaper taxation,* by hatred of the suppression of thought which went on vigorously on the continent during the eighteenth century." (Emphasis supplied.)
>
> *Chafee, Freedom of Speech* (1920), p. 32.

Act 23 of 1934 of Louisiana, therefore, in so far as it imposes a tax on advertising, is not a novel attempt at restraint.

Taxation as a form of restraint was conceived in England long before the revolution. It was used in the Colonies. For but a brief period, it was tried in Massachusetts after the revolution but promptly abandoned. It was not swept out of existence in England until after a

century and a half of struggle for liberty of thought and expression, liberty not repressed by taxation.

More than a half century before it was ended in England, taxation as a method of abridgment of the freedom of the press was forever barred in the United States.

SUPREME COURT OF THE UNITED STATES.

No. 303.—October Term, 1935.

Alice Lee Grosjean, Supervisor of Public Accounts for the State of Louisiana, Appellant,
vs.
American Press Company, Inc., et al.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

[February 10, 1936.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought by appellees, nine publishers of newspapers in the State of Louisiana, to enjoin the enforcement against them of the provisions of § 1 of the act of the legislature of Louisiana known as Act No. 23, passed and approved July 12, 1934, as follows:

"That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent. (2%) of the gross receipts of such business."

The nine publishers who brought the suit publish thirteen newspapers; and these thirteen publications are the only ones within the State of Louisiana having each a circulation of more than 20,000 copies per week, although the lower court finds there are four other daily newspapers each having a circulation of "slightly less than 20,000 copies per week" which are in competition with those published by appellees both as to circulation and as to advertising. In addition, there are 120 weekly newspapers published in the state, also in competition, to a greater or less degree, with the newspapers of appellees. The revenue derived from appellees' newspapers comes almost entirely from regular subscribers or purchasers thereof and from payments received for the insertion of advertisements therein.

The act requires everyone subject to the tax to file a sworn report every three months showing the amount and the gross receipts from the business described in section 1. The resulting tax must be paid when the report is filed. Failure to file the report or pay the tax as thus provided constitutes a misdemeanor and subjects the offender to a fine not exceeding $500, or imprisonment not exceeding six months, or both, for each violation. Any corporation violating the act subjects itself to the payment of $500 to be recovered by suit. All of the appellees are corporations. The lower court entered a decree for appellees and granted a permanent injunction. 10 F. Supp. 161.

First. Appellant assails the federal jurisdiction of the court below on the ground that the matter in controversy does not exceed the sum or value of $3,000, as required by par. 1 of § 24 of the Judicial Code. The case arises under the federal Constitution; and the bill alleges, and the record shows, that the requisite amount is involved in respect of each of six of the nine appellees. This is enough to sustain the jurisdiction of the district court. The motion was to dismiss the bill—that is to say, the bill in its entirety—and in that form it was properly denied. No motion to dismiss was made or considered by the lower court as to the three appellees in respect of whom the jurisdictional amount was insufficient, and that question, therefore, is not before us. *The Rio Grande,* 19 Wall. 178, 189; *Gibson* v. *Shufeldt,* 122 U. S. 27, 32.

Second. The objection also is made that the bill does not make a case for equitable relief. But the objection is clearly without merit. As pointed out in *Ohio Oil Co.* v. *Conway,* 279 U. S. 813, 815, the laws of Louisiana afford no remedy whereby restitution of taxes and property exacted may be enforced, even where payment has been made under both protest and compulsion. It is true that the present act contains a provision (§ 5) to the effect that where it is established to the satisfaction of the Supervisor of Public Accounts of the state that any payment has been made under the act which was "not due and collectible", the Supervisor is authorized to refund the amount out of any funds on hand collected by virtue of the act and not remitted to the state treasurer according to law. It seems clear that this refers only to a payment not due and collectible within the terms of the act, and does not authorize a refund on the ground that the act is invalid. Moreover, the act allows the Supervisor to make remittances immediately to the state treasurer

of taxes paid under the act, and requires him to do so not later than the 30th day after the last day of the preceding quarter; in which event the right to a refund, if not sooner exercised, would be lost. Whether an aggrieved taxpayer may obtain relief under § 5 is, at best, a matter of speculation. In no view can it properly be said that there exists a plain, adequate and complete remedy at law. *Davis* v. *Wakelee*, 156 U. S. 680, 688; *Union Pac. R. R. Co.* v. *Weld County*, 247 U. S. 282, 285.

Third. The validity of the act is assailed as violating the federal Constitution in two particulars—(1) that it abridges the freedom of the press in contravention of the due process clause contained in section 1 of the Fourteenth Amendment; (2) that it denies appellees the equal protection of the laws in contravention of the same Amendment.

1. The first point presents a question of the utmost gravity and importance; for, if well made, it goes to the heart of the natural right of the members of an organized society, united for their common good, to impart and acquire information about their common interests. The First Amendment to the federal Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . .". While this provision is not a restraint upon the powers of the states, the states are precluded from abridging the freedom of speech or of the press by force of the due process clause of the Fourteenth Amendment.

In the case of *Hurtado* v. *California*, 110 U. S. 516, this court held that the term "due process of law" does not require presentment or indictment by a grand jury as a prerequisite to prosecution by a state for a criminal offense. And the important point of that conclusion here is that it was deduced from the fact that the Fifth Amendment, which contains the due process of law clause in its national aspect, also required an indictment as a prerequisite to a prosecution for crime under federal law; and it was thought that since no part of the amendment could be regarded as superfluous, the term "due process of law" did not, *ex vi termini*, include presentment or indictment by a grand jury in any case; and that the due process of law clause of the Fourteenth Amendment should be interpreted as having been used in the same sense, and as having no greater extent. But in *Powell* v. *Alabama*, 287 U. S. 45, 65, 68, we held that in the light of subsequent decisions the sweeping language of the *Hurtado* case could not be accepted

without qualification. We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.

That freedom of speech and of the press are rights of the same fundamental character, safeguarded by the due process of law clause of the Fourteenth Amendment against abridgement by state legislation, has likewise been settled by a series of decisions of this court beginning with *Gitlow* v. *New York*, 268 U. S. 652, 666, and ending with *Near* v. *Minnesota*, 283 U. S. 697, 707. The word "liberty" contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well. *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589.

Appellant contends that the Fourteenth Amendment does not apply to corporations; but this is only partly true. A corporation, we have held, is not a "citizen" within the meaning of the privileges and immunities clause. *Paul* v. *Virginia*, 8 Wall. 168. But a corporation is a "person" within the meaning of the equal protection and due process of law clauses, which are the clauses involved here. *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578, 592; *Smyth* v. *Ames*, 169 U. S. 466, 522.

The tax imposed is designated a "license tax for the privilege of engaging in such business"—that is to say, the business of selling, or making any charge for, advertising. As applied to appellees, it is a tax of two per cent. on the gross receipts derived from advertisements carried in their newspapers when, and only when, the newspapers of each enjoy a circulation of more than 20,000 copies per week. It thus operates as a restraint in a double sense. First, its effect is to curtail the amount of revenue realized from advertising, and, second, its direct tendency is to restrict circulation. This is plain enough when we consider that, if it were increased to a high degree, as it could be if valid (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45, and cases cited), it well might result in destroying both advertising and circulation.

A determination of the question whether the tax is valid in respect of the point now under review, requires an examination of the history and circumstances which antedated and attended the

adoption of the abridgement clause of the First Amendment, since that clause expresses one of those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions" (*Hebert v. Louisiana*, 272 U. S. 312, 316), and, as such, is embodied in the concept "due process of law" (*Twining* v. *New Jersey*, 211 U. S. 78, 99), and, therefore, protected against hostile state invasion by the due process clause of the Fourteenth Amendment. Cf. *Powell* v. *Alabama, supra*, pp. 67-68. The history is a long one; but for present purposes it may be greatly abbreviated.

For more than a century prior to the adoption of the amendment—and, indeed, for many years thereafter—history discloses a persistent effort on the part of the British government to prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government. The struggle between the proponents of measures to that end and those who asserted the right of free expression was continuous and unceasing. As early as 1644, John Milton, in an "Appeal for the Liberty of Unlicensed Printing", assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to make public his honest views "without previous censure"; and declared the impossibility of finding any man base enough to accept the office of censor and at the same time good enough to be allowed to perform its duties. Collett, History of the Taxes on Knowledge, vol. I, pp. 4-6. The act expired by its own terms in 1695. It was never renewed; and the liberty of the press thus became, as pointed out by Wickwar (The Struggle for the Freedom of the Press, p. 15), merely "a right or liberty to publish *without* a license what formerly could be published only *with* one." But mere exemption from previous censorship was soon recognized as too narrow a view of the liberty of the press.

In 1712, in response to a message from Queen Anne (Hansard's Parliamentary History of England, vol. 6, p. 1063), Parliament imposed a tax upon all newspapers and upon advertisements. Collett, vol. I, pp. 8-10. That the main purpose of these taxes was to suppress the publication of comments and criticisms objectionable to the Crown does not admit of doubt. Stewart, Lennox and the Taxes on Knowledge, 15 Scottish Historical Review, 322-327. There

followed more than a century of resistance to, and evasion of, the taxes, and of agitation for their repeal. In the article last referred to (p. 326), which was written in 1918, it was pointed out that these taxes constituted one of the factors that aroused the American colonists to protest against taxation for the purposes of the home government; and that the revolution really began when, in 1765, that government sent stamps for newspaper duties to the American colonies.

These duties were quite commonly characterized as "taxes on knowledge", a phrase used for the purpose of describing the effect of the exactions and at the same time condemning them. That the taxes had, and were intended to have, the effect of curtailing the circulation of newspapers, and particularly the cheaper ones whose readers were generally found among the masses of the people, went almost without question, even on the part of those who defended the act. May (Constitutional History of England, 7th ed., vol. 2, p. 245), after discussing the control by "previous censure", says: ". . . a new restraint was devised in the form of a stamp duty on newspapers and advertisements,—avowedly for the purpose of repressing libels. This policy, being found effectual in limiting the circulation of cheap papers, was improved upon in the two following reigns, and continued in high esteem until our own time." Collett (vol. I, p. 14), says, "Any man who carried on printing or publishing for a livelihood was actually at the mercy of the Commissioners of Stamps, when they chose to exert their powers."

Citations of similar import might be multiplied many times; but the foregoing is enough to demonstrate beyond peradventure that in the adoption of the English newspaper stamp tax and the tax on advertisements, revenue was of subordinate concern; and that the dominant and controlling aim was to prevent, or curtail the opportunity for, the acquisition of knowledge by the people in respect of their governmental affairs. It is idle to suppose that so many of the best men of England would for a century of time have waged, as they did, stubborn and often precarious warfare against these taxes if a mere matter of taxation had been involved. The aim of the struggle was not to relieve taxpayers from a burden, but to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their government. Upon the correctness of this conclusion the very charac-

terization of the exactions as "taxes on knowledge" sheds a flood of corroborative light. In the ultimate, an informed and enlightened public opinion was the thing at stake; for, as Erskine, in his great speech in defense of Paine, has said, "The liberty of opinion keeps governments themselves in due subjection to their duties." Erskine's Speeches, High's ed., vol. I, p. 525. See May's Constitutional History of England, 7th ed., vol. 2, pp. 238-245.

In 1785, only four years before Congress had proposed the First Amendment, the Massachusetts legislature, following the English example, imposed a stamp tax on all newspapers and magazines. The following year an advertisement tax was imposed. Both taxes met with such violent opposition that the former was repealed in 1786, and the latter in 1788. Duniway, Freedom of the Press in Massachusetts, pp. 136-137.

The framers of the First Amendment were familiar with the English struggle, which then had continued for nearly eighty years and was destined to go on for another sixty-five years, at the end of which time it culminated in a lasting abandonment of the obnoxious taxes. The framers were likewise familiar with the then recent Massachusetts episode; and while that occurrence did much to bring about the adoption of the amendment (see Pennsylvania and the Federal Constitution, 1888, p. 181), the predominant influence must have come from the English experience. It is impossible to concede that by the words "freedom of the press" the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom consisted only in immunity from previous censorship; for this abuse had then permanently disappeared from English practice. It is equally impossible to believe that it was not intended to bring within the reach of these words such modes of restraint as were embodied in the two forms of taxation already described. Such belief must be rejected in the face of the then well known purpose of the exactions and the general adverse sentiment of the colonies in respect of them. Undoubtedly, the range of a constitutional provision phrased in terms of the common law sometimes may be fixed by recourse to the applicable rules of that law. But the doctrine which justifies such recourse, like other canons of construction, must yield to more compelling reasons whenever they exist. Cf. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 668-669. And, obviously, it is subject to the qualification that the common

law rule invoked shall be one not rejected by our ancestors as unsuited to their civil or political conditions. *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, 276-277; *Waring et al.* v. *Clarke*, 5 How. 441, 454-457; *Powell* v. *Alabama*, *supra*, pp. 60-65.

In the light of all that has now been said, it is evident that the restricted rules of the English law in respect of the freedom of the press in force when the Constitution was adopted were never accepted by the American colonists, and that by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting any form of previous restraint upon printed publications, or their circulation, including that which had theretofore been effected by these two well-known and odious methods.

This court had occasion in *Near* v. *Minnesota*, *supra*, at pp. 713 *et seq.*, to discuss at some length the subject in its general aspect. The conclusion there stated is that the object of the constitutional provisions was to prevent previous restraints on publication; and the court was careful not to limit the protection of the right to any particular way of abridging it. Liberty of the press within the meaning of the constitutional provision, it was broadly said (p. 716), meant "principally although not exclusively, immunity from previous restraints or [from] censorship."

Judge Cooley has laid down the test to be applied—"The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." 2 Cooley's Constitutional Limitations, 8th ed., p. 886.

It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax, but one single in kind, with a long history of hostile misuse against the freedom of the press.

The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any

other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.

In view of the persistent search for new subjects of taxation, it is not without significance that, with the single exception of the Louisiana statute, so far as we can discover, no state during the one hundred fifty years of our national existence has undertaken to impose a tax like that now in question.

The form in which the tax is imposed is in itself suspicious. It is not measured or limited by the volume of advertisements. It is measured alone by the extent of the circulation of the publication in which the advertisements are carried, with the plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers.

2. Having reached the conclusion that the act imposing the tax in question is unconstitutional under the due process of law clause because it abridges the freedom of the press, we deem it unnecessary to consider the further ground assigned that it also constitutes a denial of the equal protection of the laws.

Decree affirmed.